Oral Arguments in Texas v. United States

09.2018

CASE BRIEF

ORAL ARGUMENTS IN TEXAS V. UNITED STATES

INTRODUCTION

In *Texas v. United States*, 20 different state Attorneys General and two private citizens ("Plaintiffs") filed suit to challenge the constitutionality of the portions of the Affordable Care Act ("ACA") that (1) mandate individuals buy coverage or pay a penalty to the IRS, and (2) guarantee issuance of coverage to those with pre-existing conditions.

DISCUSSION

In the complain, Plaintiffs argue that the individual mandate became unconstitutional when the Tax Cuts and Jobs Act did away with the penalty tax that used to be paid to the IRS for failing to obtain coverage. Plaintiffs position is that Congress has no power to force state citizens to buy healthcare coverage if it is not tired to a tax. Plaintiffs further argue that the individual mandate cannot be severed from the provisions guaranteeing coverage to those with pre-existing conditions, thus all such provisions should be struck from the ACA.

Judge Reed O'Connor of the federal district court for the Northern District of Texas is expected to rule on the merits of the case after the oral arguments are held on September 5, 2018.

CONCLUSION

If the Plaintiffs in this case prevail, there is sure to be a large amoun of litigation to follow. A ruling in favor of the Plaintiffs would essentially kill the individual mandate and mandate against discrimination based on pre-existing conditions. Such a holding would essentially end the purpose of the ACA.

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However, it is important to note that this case will only bind the Northern District of Texas once decided, at least for the time being. Either a federal district or circuit court for you jurisdiction or the Supreme Court would have to echo the Texas opinion for the law to change anywhere else.

LEGISLATIVE NEWS – GOP SENATORS RELEASE PROPOSED BILL THAT WOULD AFFORD SOME PROTECTIONS FOR PRE-EXISTING CONDITIONS

In response to the upcoming hearing in *Texas v. United States*, ten Republican Senators released a proposed bill that would afford some "protections for patients with pre-existing conditions." The group explained that coverage for some individuals would be jeopardized if the *Texas* Court determines the mandates at issue are unconstitutional.

The proposed bill would amend the Health Insurance Portability and Accountability Act ("HIPPA") to prohibit the denial of coverage baed on health status but would not prevent discrimination based on all pre-existing conditions currently covered by the ACA. For Example, if the Plaintiffs in Texas succeed, the bill would not prevent discrimination based on age, gender, occupation, or tobacco use.

CONCLUSION

Here, the bill anticipates that the judge in *Texas v. United States* will rule in favor of the Plaintiffs and strike down the individual, pre-existing condition, and health status mandates. If passed, the bill will serve to restore the mandates against discrimination based on health status and some pre-existing conditions.

CASE BRIEF – PARTICIPANTS HAVE STANDING TO SUE OVER DENIED BENEFITS EVEN IF THEY WILL NOT PAY OUT-OF-POCKET

INTRODUCTION

In Springer v. Cleveland Clinic Employee Health Plan, a doctor began a fellowship at the Cleveland Clinic in July of 2010. On July 7, 2010, the doctor arranged for his terminally ill son to be transported via air ambulance company Angel Jet from Utah to Cleveland.

The doctor did not obtain prior permission from his healthcare plan before assigning Angel Jet his rights to benefits as required by the terms of the plan. When Angel Jet sent the bill to the plan, it was denied. The doctor then sued the plan seeking a ruling that Angel Jet was entitled to payment.

DISCUSSION

The issue in front of the court whether a participant may sure a plan for denying benefits even when the participant would not have to pay the expenses out-of-pocket.

The Court held that a participant in an employee benefit plan has standing to sue when he or she has a (1) concrete and particularized injury, (2) the injury can be redressed, and (3) there is a sufficient link between the conduct complained of and the injury. The Court explained that the plain language of ERISA states that a denial of benefits is in fact a concrete and particular injury, and does not require financial loss to maintain a cause of action, the denial of benefits is injurious enough.

CONCLUSION

In sum, this case stands for the proposition that a participant may be able to sue even after a plan denies benefits that were improperly assigned to a third party.

Going forward, it could be advantageous for plans to consider requiring approval before a participant can assign his rights to a provider of high cost services, such as an air ambulance. If the participant fails to obtain approval of the assignment and subsequently sues after the claim is denied, the plan will have an easy defense against the suit.