

IN THE SUPREME COURT OF THE STATE OF NEVADA

**Supreme Court Case No. 81680
District Court Case No. A-19-792978-B**

UnitedHealth Group, Inc., United Healthcare Insurance Company, UnitedHealthcare
Care Services, Inc., UMR, Inc., Oxford Health Plans, Inc., Sierra Health-Care
Insurance Company, Inc., Sierra Health-Care Options, Inc., Health Plan of Nevada,
Inc.,
Petitioners

v.

The Eighth Judicial District Court, State of Nevada, Clark County, and
the Honorable Nancy L. Allf, District Court Judge,
Respondent

and

Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada-
Mandavia, P.C., Crum Stefanko and Jones, Ltd.,
Real Parties in Interest.

**REPLY IN SUPPORT OF PETITIONERS' MOTION TO STAY THE
UNDERLYING DISTRICT COURT CASE PENDING RESOLUTION OF
ITS PETITION FOR WRIT OF PROHIBITION, OR, ALTERNATIVELY,
MANDAMUS**

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I. INTRODUCTION

Plaintiffs' Opposition misstates the scope of Defendants' Petition in an attempt to convince this Court that a stay is unnecessary. Contrary to Plaintiffs' arguments that discovery would necessarily continue even if the Petition is granted, the Petition seeks a ruling that all eight of Plaintiffs' state law claims are preempted by ERISA's expansive scope, which would *result in dismissal of each of Plaintiffs' claims*. If a stay is not entered and the Petition is later granted, Defendants will have been deprived of their statutory right under ERISA to an "inexpensive[] and expeditious[]" resolution of all claims related to United-administered health plans. The Petition is meritorious and a stay should be entered pending its resolution.

II. LEGAL ARGUMENT

A. The Purpose of United's Writ Petition Will be Defeated Absent a Stay

In its Motion, United argued that a core purpose of ERISA is to ensure (1) "nationally uniform plan administration" to (2) "comprehensively regulate" employee benefit plans like those at issue in this suit and to (3) "resolve disputes over benefits inexpensively and expeditiously." Motion at pp. 5-8. United further argued that this core purpose, which the Petition seeks to enforce, would be frustrated without a stay because Plaintiffs are forcing the Defendants to

litigate and engage in expansive discovery on state law claims that are unequivocally preempted by ERISA. *Id.*

Rather than respond to the above argument, Plaintiffs conflate this issue with the fourth factor under NRAP 8(c)—likelihood of success on the merits—and proceed to argue that Defendants’ Petition lacks merit. As this Court knows, the likelihood of success on the merits is not relevant to an analysis of the first factor under NRAP 8(c). Plaintiffs’ misdirection is an indication of how strongly this factor favors a stay.

Second, Plaintiffs argue that United’s Petition is not seeking dismissal of the entire suit and thus a stay is not needed because extensive discovery will have to occur regardless of whether the Petition is granted. Opposition at p. 5. While this argument comes closer to actually addressing the first NRAP 8(c) factor, it is also a misrepresentation. United’s Petition makes it abundantly clear that United is seeking a ruling that all eight of Plaintiffs’ state law claims are both conflict preempted and completely preempted by ERISA. *See e.g.*, Petition at p. 18. Thus, if the Petition is granted, Plaintiffs’ First Amended Complaint will be dismissed in its entirety and discovery related to Plaintiffs’ state law claims will cease.

Plaintiffs allude to the possibility that they might amend their Complaint to assert a statutory ERISA claim if the writ is granted and then conduct discovery

on that claim (Opposition at p. 5), but even assuming this occurred, the entire nature of this case would then be transformed. Critically, Plaintiffs' Opposition does not dispute that ERISA prohibits plaintiffs from asserting claims which have not been administratively exhausted and does not dispute that less than 2,000 of Plaintiffs' 22,153 claims have been administratively appealed. *See* Motion at p. 6 and Ex. 9. The Opposition further does not dispute that discovery under ERISA is presumptively limited to the administrative record. Motion at pp. 6-7. Thus, even under Plaintiffs' speculative scenario, less than 2,000 claims for reimbursement would be at issue (down from 22,153) and discovery on those claims would be presumptively limited to the administrative record and controlled by ERISA. Forcing Defendants to continue to litigate tens of thousands of claims that are subject to dismissal under ERISA and requiring the production of extensive commercially sensitive information from outside the administrative record while the Petition is pending thwarts the protections Defendants are entitled to under ERISA and frustrates the Petition's object of enforcing these protections. This factor strongly favors issuance of a stay.

B. United is Likely to Prevail on the Merits of the Writ Petition

Plaintiffs' Answer to the Petition largely focuses on arguing that *complete* preemption does not apply to Plaintiffs' state law claims. Answer at pp. 22-27. However, the leading argument in the Petition is that Plaintiffs' claims are

conflict preempted because all of the claims “relate to” ERISA plans. Petition at pp. 23-34. Plaintiffs seek to avoid conflict preemption for good reason—the defense of conflict preemption under § 514(a) of ERISA is “much broader” than complete preemption and thus even more likely to apply to Plaintiffs’ claims. *Jass v. Prudential Health Care Plan, Inc.*, 88 F.3d 1482, 1492 (7th Cir. 1996) (emphasis added). Plaintiffs’ state law claims seek an order from the court forcing Defendants to pay a higher rate of payment to out-of-network providers than is required by the plans’ payment terms. Compl. at ¶ 21(PA 5-6). Such a request is in direct conflict with ERISA’s requirement that a plan shall “specify the basis on which payments are made to and from the plan” (29 U.S.C. § 1102(b)(4)) and that the insurer shall administer the plan “in accordance with the documents and instruments governing the plan.” 29 U.S.C. § 1104(a)(1)(D). Therefore, Plaintiffs’ state law claims impact “a central matter of plan administration,” “interfere[] with nationally uniform plan administration” and are thus conflict preempted. *Gobeille v. Liberty Mut. Ins. Co.* 136 S. Ct. 936, 943 (2016). Defendants are likely to prevail on the Petition and this factor favors issuing a stay.¹

¹ Plaintiffs’ Opposition also raises the same “rate” of payment versus “right” to payment case law that Defendants thoroughly distinguished in their Petition and Reply. Petition at pp. 34-39; Reply at pp. 11, 19, 23-26.

C. The Balance of Harms Weighs In Favor of Granting a Stay

If the Petition is granted, but a stay is not in place while the Petition is pending, legislative intent as it relates to ERISA will have been thwarted because United, a health plan administrator, will be forced to litigate and respond to expansive discovery related to claims that are clearly ERISA-preempted. Contrary to Plaintiffs' contentions, the deprivation of statutory rights under ERISA constitutes a "serious injury" under NRAP 8(c) and justifies a brief stay. This Court is not required to turn a blind eye to the burdensome and out-of-scope discovery Plaintiffs are currently imposing on United (*see* Motion at p. 3)—discovery that will be meaningless and unnecessary under ERISA, if the Petition is granted. In contrast, Plaintiffs only asserted harm is delay in receiving a money judgment, which does not constitute irreparable harm. *See Hansen v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 116 Nev. 650, 658, 6 P.3d 982, 987 (2000).

III. CONCLUSION

Based on the foregoing, this Court should exercise its discretion to stay the underlying Clark County proceeding pending resolution of the Petition.

Dated: December 7, 2020

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that I am an employee of Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC and that on December 7, 2020, I filed a Reply in Support of Motion to stay the Underlying District Court Case Pending Resolution of Petition for Writ of Prohibition, or, Alternatively, of Mandamus with the Clerk of the Nevada Supreme Court and served a copy of the Writ to the addresses shown below (in the manner indicated below).

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The Honorable Judge Nancy L. Allf
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