Chapter 11

ERISA PREEMPTION AND EFFECT ON OTHER LAWS

2013 Mid-Winter Report

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American Bar Association
Labor and Employment Section
Employee Benefits Committee

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I. Introduction

A. Scope of ERISA Section 514

Moon v. BWX Technologies Inc., No. 11-1750, 2012 WL 5992209, 54 Employee Benefits Cas. 1774 (4th Cir. Dec. 3, 2012). Plaintiff's husband obtained life insurance coverage through his employer shortly before he went on long term disability leave and retired. Although this coverage should have ceased at the time the husband stopped working, the insurer continued to accept premiums and the insurance remained in force until the husband's death. The insurer then denied benefits on the grounds that coverage ceased when the husband stopped working. Plaintiff filed suit in state court claiming that the insurer and her husband had entered into an independent post-employment contract that was not governed by ERISA. Defendant removed the case to federal court, where it remained despite plaintiff's motion for remand. On appeal, the Fourth Circuit held that plaintiff's claims were completely preempted by ERISA and again denied remand.

Loffredo v. Daimler AG, No. 11-1824, 2012 WL 4351358, 54 Employee Benefits Cas. 1007 (6th Cir. Sept. 25, 2012). Plaintiffs participated in a "top hat" pension plan offered by their employer, Chrysler. The trust document establishing this plan provided that, in case of insolvency, all plan monies and property could be used to pay claims of Chrysler's general creditors. The plan also permitted Chrysler to "buy out" an employee's right to benefits through purchase of an annuity. When the company experienced financial difficulties in 2005-2006, it purchased annuities for some, but not all, plan participants. The company hid its financial difficulties from the participants who were not offered annuities. Thereafter, Chrysler filed for bankruptcy in 2009 and the participants who remained in the plan lost most of their benefits. They sued various persons and entities related to Chrysler, alleging state law claims of promissory estoppel, breach of fiduciary duty, age discrimination, fraud and statutory conversion. Defendants removed the case to federal court and moved to dismiss all claims made against them. The district court granted the dismissals. On appeal, the Sixth Circuit first determined that ERISA's preemption provision applied equally to "top hat" and other ERISA plans despite the fact that many of ERISA's protections and rights of action did not apply to "top hat" plans. The Court then considered plaintiffs' claims and determined that all claims except an age discrimination claim were preempted by ERISA.

B. ERISA Definition of State Law

II. Plan Covered by ERISA

A. Definition of Employee Benefit Plan

Kingsland v. Xerox Corp., 829 F. Supp. 2d 194, 53 Employee Benefits Cas. 1455 (W.D.N.Y. Dec. 5, 2011). The court, in an order ultimately granting defendant’s motion to dismiss, rejected defendant’s argument that plaintiff’s state common law claims (breach of contract and unjust enrichment) were preempted by ERISA. Disposing of this argument in one footnote, the court explained that plaintiff’s claims arose under a stock option plan not covered
under ERISA – a fact that both plaintiff and defendant did not dispute – and not under the defendant’s ERISA-covered retirement plan.

B. Existence of a Covered Plan in the Absence of a Formal Document or ERISA Compliance

C. Ongoing Plan Administration

_Gautier-Figueroa v. Bristol-Myers Squibb Puerto Rico_, 845 F. Supp. 2d 444 (D.P.R. Feb. 29, 2012). The court engaged in extended analysis in concluding that the employer’s severance plan was not an employee welfare benefit plan subject to ERISA because it did not require on-going administration. The court appeared to misapply the Supreme Court’s decision in _Ft. Halifax Packing Co. v. Coyne_, 482 U.S. 1 (1987), rejecting various administrative tasks as inconsequential and insufficient, either individually or collectively, to satisfy the requirement of on-going plan administration. The rationale used by the court would result in few, if any, severance benefit plans being considered to be “employee welfare benefit plans” subject to ERISA.

_Caldwell v. PNC Financial Services Group_, 835 F. Supp. 2d 510 (S.D. Ohio 2011). ERISA preempted a breach of contract claim seeking benefits under change-in-control severance plan for management employees. Although the plan was only in effect for a 15-month period, the court concluded that it required significant level of administrative over-sight and, therefore, constituted an employee welfare benefit plan subject to ERISA.

_Kirkindoll v. Texans Credit Union_, No. 3:11-CV-1921-D, 2012 WL 4866501 (N.D. Tex. Oct. 15, 2012). The court held that executive deferred compensation plan was not an employee benefit plan subject to ERISA because the plan did not require on-going administration and, therefore, plaintiff’s state law claims involving benefits allegedly due under the plan were not preempted by ERISA. The court’s analysis appears to mistakenly discount administration involved in the plan’s operation.

D. Level of Employer Involvement Necessary for the Establishment or Maintenance of a Plan

1. DOL Safe Harbor and Cases Construing It

_Clay v. AT&T Communications of California_, No. 2:12-cv-2027 JAM KJN PS, 2012 WL 6560729, (E.D.Cal. Dec. 14, 2012). The court found a claim for unpaid “wages” due under short-term disability benefit program, which was part of a welfare benefits wrap plan, preempted by ERISA. The court engaged in an extended analysis of the payroll practices exemption under the Department of Labor regulations defining “employee welfare benefit plan” for ERISA purposes. 29 C.F.R. § 2510.3-1(b)(2). As part of that analysis, the court concluded that the benefits constituted “normal compensation” within the meaning of the regulation even though the benefits were equal to 50 percent, rather than 100 percent, of regular wages for shorter service employees and were subject to an offset for state and Social Security disability benefits. The exception, however, was determined to be inapplicable because the benefits were funded through a VEBA and not from the employer’s general assets, distinguishing the Ninth Circuit’s decision in _Alaska Airlines v. Oregon Bureau of Labor_, 122 F.3d 812 (9th Cir. 1997).
Ballard v. Leone, No. MJG-11-779, 2012 WL 665987, 53 Employee Benefits Cas. 1488 (D.Md. Feb. 28, 2012). The court rejected arguments asserted by AFLAC that an individual short term disability insurance policy purchased by plaintiff through payroll deduction was an ERISA plan. Therefore, plaintiff’s state law claims against AFLAC for wrongful denial of benefits were not preempted by ERISA.

2. Other Cases on Employer Involvement

E. Arrangements Excluded by Statute or Regulation

1. Vacation Pay and Other Payroll Practices

Akaosugi v. Benihana National Corp., 282 F.R.D. 241 (N.D. Cal. Mar. 30, 2012). In an action challenging the employer’s vacation pay policy, plaintiffs moved for class certification. The court found the proposed class of former employees was ascertainable, even though the court had not yet determined the merits of the employer’s ERISA preemption affirmative defense. The court reasoned that the policy’s validity under ERISA was a common question that applied uniformly to the class, and the employer maintained records for each current and former employee that included information sufficient to determine class membership.

2. Plans Maintained Solely to Provide Workers’ Compensation, Disability and/or Unemployment Benefits

3. Other Plans

F. Conversion Policies

Sankey v. Metropolitan Life Ins. Co., No-12-1135, 2012 WL 23338964 (E.D. La. June 19, 2012). The court held ERISA preempted the interpretation of plan conversion rights where an insurer unilaterally canceled a conversion policy. Prior to his death, Sankey converted his group life insurance policy to an individual policy. Arguing it mistakenly converted the policy, MetLife unilaterally canceled the original policy, issued a new policy and paid a lesser death benefit to Sankey’s beneficiaries. Recognizing circuit “disagreement” concerning whether ERISA covers claims for benefits under conversion policies, the court framed the issue as whether Sankey had a right to convert based on his employer’s group life insurance plan. Reasoning the construction of conversion rights depended on interpretation of an ERISA plan, the court found ERISA preempted Sankey’s claim for benefits.

III. State Laws that Conflict with ERISA

Liberty Mutual Ins. Co. v. Kimbell, No. 2:11-cv-204, 2012 WL 5471225, 54 Employee Benefits Cas. 15186 (D. Vt. Nov. 9, 2012). Plaintiff sought a declaration that ERISA preempted Vermont laws requiring it to provide information to the state's health care database and an injunction blocking the state's demand for plaintiff's eligibility and claims files. The Vermont database was intended to assist the state insurance department with identifying health care needs and improving the quality and affordability of health care. The court recognized that plaintiff's plan was an employee benefit plan governed by ERISA. It held, however, that the state law was
not preempted because it was not directed at employee benefit plans and had only peripheral effect on the administration of such plans.

_Sherfel v. Gassman_, No. 2:09-cv-871, 2012 WL 4499245, 54 Employee Benefits Cas. 1239 (S.D. Ohio Sept. 28, 2012). A provision of the Wisconsin Family Leave Law permitted employees to substitute other types of paid or unpaid leave provided by an employer for family or medical leave. As per this law, the Wisconsin Department of Workforce Development directed Nationwide to permit a Wisconsin based employee to use benefits provided under Nationwide's short term disability (STD) program for time off to bond with her newborn child. The fiduciaries of the Nationwide Plan instituted suit, seeking to enjoin the application of the substitution provision to the plan's STD program on the basis of ERISA preemption. The court found the provision to be preempted insofar as its application would require an ERISA plan to substitute benefits provided by an STD program for family or medical leave.

IV. The Enigmatic “Relate To” Clause

A. Breadth of “Relate To”

_National Security Systems, Inc. v. Iola_, 700 F.3d 65 (3d Nov. 8, 2012). Employers filed suit against individuals, corporations and associations who created, marketed, operated and endorsed voluntary employee beneficiary associations (VEBAs) asserting claims under ERISA, RICO and New Jersey state and common law. One of the defendants, a financial planner, induced plaintiffs to adopt an employee welfare benefit plan known as an EPIC because of its tax benefits that plaintiffs later discovered were illusory. With respect to preemption, the district court held that certain claims related to the alleged misrepresentations about conversion credits and commissions made _before_ and _after_ the ERISA plans were established were preempted because they “related to” alleged misconduct in the administration of the ERISA plans, however, the district court held that other claims for misrepresentation that occurred before the Plans’ were adopted were not preempted. On appeal, the Third Circuit agreed with the district court that the claims relating to the alleged misrepresentations about conversion credits and commissions were preempted to the extent they related to alleged misrepresentations made _after_ the ERISA plans’ were adopted as those claims had a connection with the plans because they were premised on the existence of the plans. The Third Circuit then looked at whether the state law claims regarding misrepresentations that occurred _before_ the ERISA plans were adopted were preempted and determined that the question was “do common law claims that an insurance agent misrepresented the structure and benefits afforded by an ERISA plan in order to induce participation in that plan ‘ha[ve] a connection with’ the plan, such that they are preempted.” The Third Circuit held that those claims were not preempted because they rested on misrepresentations made about the plan _before_ the plans’ existence, were not premised on a challenge to the actual administration of the plan and did not strike at the area of core ERISA concern – “funding, benefits, reporting, and administration” – in which the use of state law threatens to undermine the goals of Congress in enacting ERISA.

_McLemore v. Regions Bank_, 682 F. 3d. 414, 53 Employee Benefits Cas. 2313 (6th Cir. June 8, 2012). A bankruptcy trustee and several former clients of a debtor who stole money from employee benefit plans that he managed sued the bank where the plans’ accounts were held. The trustee and clients alleged that the bank had negligently or knowingly allowed the thefts.
Their suit alleged both ERISA and state law claims, all of which were dismissed by the court. The plaintiffs appealed the dismissal of the claims. Although the Circuit Court held that the bankruptcy trustee had standing as an ERISA fiduciary to bring his claims, it upheld dismissal of the claims asserted by the Trustee and other plaintiffs. The court determined that the state law claims of negligence and recklessness, unjust enrichment and violation of Tennessee's Consumer Protections Act asserted against the nonfiduciary bank related to the employee benefit plans because they derived from the debtor's breach of his fiduciary duties to the plan.

B. Limits of “Relate To”

1. Too Tenuous and Remote

   *Meznarich v. Morgan Waldron Insurance Management*, No. 1:10cv2532, 2012 WL 2367268, 53 Employee Benefits Cas. 2880 (N.D. Ohio June 21, 2012). Plaintiff union members sued the administrators and fiduciaries of a self funded ERISA plan claiming that they fraudulently created a self funded ERISA plan and caused the plan to be underfunded. Defendants brought a third party action against plaintiffs' employer, the union representative and the third party administrator on the grounds of negligent misrepresentation, contribution/indemnification and unjust enrichment. The defendants alleged that plan was underfunded because the third party defendant had provided faulty claims experience data which was used to set contribution rates. In reviewing the third party defendants' motion to dismiss, the court determined that only the unjust enrichment claim was preempted by ERISA. The court explained that defendants’ negligent misrepresentation claim was predicated on tort law notions of honesty and fairness, not on a duty arising from ERISA. Similarly, the court found that the conduct for which defendants sought contribution and/or indemnification was unrelated to the plan.

   *Hollingshead v. Stanley Works Long Term Disability Plan*, No. 10-cv-03124-WJM-CBS, 2012 WL 959402, 53 Employee Benefits Cas. 2342 (D. Col. Mar. 21, 2012). Court held that a state civil theft claim based upon disability benefit insurer’s unauthorized withdrawal of funds from claimant’s bank account was not preempted by ERISA because relationship of claim to ERISA plan was too tenuous.

2. *Travelers* and Later Supreme Court Cases

3. Circuit Court Attempts to Define the Boundaries of Preemption

   *Access Mediquip v. UnitedHealthcare Ins. Co.*, 698 F.3d 229, 54 Employee Benefits Cas. 1003 (5th Cir. Oct. 5, 2012) (en banc). Court reinstates three-judge panel’s decision holding that healthcare provider’s state law claims for negligent misrepresentation, promissory estoppel and violation of state insurance code, which arose from insurer’s verification of coverage, were not preempted by ERISA. In doing so, the Fifth Circuit, en banc, expressly overruled, to the extent inconsistent with the panel’s decision, *Cypress Fairbanks Med. Cir., Inc. v. Pan-American Life Ins. Co.*, 110 F.3d 280 (5th Cir. 1997); *Hermann Hosp. v. MEBA Med. & Benefits Plan*, 845 F.2d
4. Lack of ERISA Standing

V. Statutory Exceptions to Preemption

A. The Saving and Deemer Clauses

1. Insurance Regulation

Iron Workers Locals 40, 361 & 417 Health Fund v. Dinnigan, --- F. Supp. 2d. ---, 12 CIV. 2566 PAC, 2012 WL 5877426 (S.D.N.Y. Nov. 21, 2012). A beneficiary of the plan recovered plan-paid medical expenses from a third-party tortfeasor. The plaintiff-plan sought reimbursement of nearly $1.7 million of medical expenses it paid on behalf of the beneficiary. The court held, inter alia, that ERISA preempted New York’s anti-subrogation rules with respect to the plan, because the plan was self-funded (as opposed to insured). Although the 2000 and 2008 SPDs stated that the plan was insured by Empire Blue Cross/Blue Shield, a New York insurer, the plan responded that it was a drafting error, and submitted affidavits stating that the plan was self-insured, and had notified participants of such in an October 2003 letter and on the back of participants’ ID cards. Accordingly, state insurance law was preempted.

Z.D. v. Group Health Coop., 829 F. Supp. 2d 1009, 53 Employee Benefits Cas. 1115 (W.D. Wash. Nov. 4, 2011). The court held ERISA did not preempt a provision in Washington’s Mental Health Parity Act that required mental health coverage “be delivered under the same terms and conditions as medical and surgical services.” Group Health Cooperative (GHC), a Washington insurer, denied mental health coverage to Z.D., a beneficiary of an ERISA employee welfare benefit plan. While the Plan did not explicitly require GHC to cover Z.D.’s mental health treatment, Washington’s Mental Health Parity Act (MHPA), a state insurance regulation, required coverage. The court held that the MHPA fell within ERISA’s savings clause. Reasoning the state law is specifically directed toward entities engaged in insurance, the court found the MHPA is directed at health benefit plans and that the statute acts to control the terms of insurance policies. As to whether the state law substantially affects the risk pooling arrangement between the insurer and the insured, the court found MHPA “obviously regulates the spreading of risk” as it reflects the legislative judgment that the risk of mental-health care should be shared.

Ehas v. Life Ins. Co. of N. America, No. 12 C 3537, 2012 WL 5989215 (N.D. Ill. Nov. 29, 2012). The court held that state regulation prohibiting discretionary interpretation clauses in contracts of insurance and related documents is not preempted by ERISA and operates to strip insured ERISA disability benefits plan of its discretion-conferring language and results in de novo review of claim denial. The court reasoned that the regulation fell within the scope of the ERISA preemption savings clause for state laws regulating insurance.

Trotter v. Kennedy Krieger Institute, No. 1:11-cv-03422-JKB, 2012 WL 739087, 2012 U.S. Dist. LEXIS 30335 (D. Md. Mar. 6, 2012). The court held that a claim based on a provision of the Maryland Insurance Code which required insurance policies to contain a provision that the
policy is uncontestable, except for nonpayment of premiums, after the policy has been in force for two years was preempted, even if the law itself was not, because the plaintiff would need to prove that a plan existed and had been in place for two years in order to prevail. The court went on to say that the plan complied with the Maryland law by including the provision and that any claim that the defendants wrongfully contested the policy was a contract claim which is preempted. The court, however, allowed the plaintiff to file an amended complaint alleging ERISA claims.

2. State Banking and Securities Laws

B. Generally Applicable Criminal Laws

C. Hawaii Prepaid Health Care Act

D. Multiple Employer Welfare Arrangements

E. ERISA Interaction with Other Federal Laws

U.S. v. Cunningham, 866 F. Supp. 2d 1050 (S.D. Iowa June 11, 2012). The court held that ERISA’s prohibition on the assignment or alienation of retirement benefits, section 401(a)(13)(A) of the Internal Revenue Code, does not trump the operation of federal law concerning enforcement of civil judgments by the United States, addressed at 18 U.S.C. § 3613. The collection statute clarified its ambit “[n]otwithstanding any other Federal law[.]” Accordingly, the court explained that Congress clearly intended the collection statute to override ERISA’s alienation provision, allowing the government to reach defendants’ ERISA-covered retirement plan benefits, through garnishment in this particular case.

F. Effect of Section 514 on Pre-ERISA Events

VI. Removal Issues

VII. Application of Preemption to Particular Claims

A. Benefit Denials and Processing of Benefit Claims

Treasurer, Trustees of Drury Industries, Inc. Health Care Plan v. Goding, 692 F.3d 888, 54 Employee Benefits Cas. 1064 (8th Cir. Sept. 7, 2012). Plan Administrator brought action against plan beneficiary and law firm seeking to obtain reimbursement for benefits it paid under the ERISA Plan’s subrogation provision and asserting theories of equitable lien by agreement, restitution, imposition of a constructive trust, tortuous interference with contractual relations and conversion. In affirming the district court, the Eight Circuit held that state causes of action regarding a subrogation agreement were completely preempted because the state causes of action for conversion of settlement funds could have been brought under ERISA §502(a)(1)(B). Any right to any settlement funds from either the beneficiary or the law firm were created and emanated solely from an ERISA plan and therefore the only avenue for enforcing a subrogation agreement under the plan was through ERISA.
Sconiers v. First Unum Life Ins. Co., 830 F. Supp. 2d 772 (N.D. Cal. Nov. 18, 2011). A plan participant brought an ERISA action alleging that her benefits were improperly calculated, and later, improperly terminated, in violation of ERISA. The defendants sought summary judgment. One of the plaintiff’s claims against Unum was for declaratory and injunctive relief based on a finding that Unum had violated California Insurance Code § 10144. The court noted that the plaintiff did not seek substantive relief under Section 10144, but rather cited it as a “relevant rule of decision” whose violation would demonstrate Unum’s abuse of discretion under ERISA. Accordingly, it concluded that it need not address the parties’ arguments concerning preemption of Section 10144 by ERISA.

Herman v. Lincoln National Insurance Company, 842 F. Supp. 2d 851 (D. Md. Feb. 7, 2012). The plaintiff failed to endorse or deposit a check for benefits paid by the plan and the defendant failed to deliver the unclaimed funds to the Comptroller of Maryland as required by state law. Rejecting the argument that the plaintiff’s complaint only relate to the failure to reissue a payment check, replace a payment check or escheat plaintiff’s unclaimed funds to the State of Maryland, the court held that state law claims were preempted because they could not be resolved without passing on the validity of plan terms barring claims brought more than three years after proof of loss.

B. Laws Regulating Fiduciary Conduct, Reporting, Funding and Disclosure

C. Wrongful-Death Claims

D. Service Provider Claims

1. Claims by Plans, Participants, Employers and Fiduciaries against Service Providers

Guyan Int’l v. Professional Benefits Administrators, 689 F.3d 793, 54 Employee Benefits Cas. 1049 (6th Cir. Aug. 20, 2012). Employers sponsoring self-funded medical plans sued claims administrator alleging that the latter used for its own purposes funds deposited for the payment of plan benefits. Claims were asserted under ERISA for breach of fiduciary duty and under state law for breach of contract. The court held that the claims administrator was a fiduciary under ERISA and therefore ERISA’s civil enforcement mechanism applied and plaintiffs’ state law breach of contract claim was preempted.

Fisher v. Blue Cross and Blue Shield of Texas, --- F. Supp. 2d ---, 2012 WL 2922723 (N.D. Tex. July 17, 2012). Dispute over amounts billed by provider of anesthesia services; service provider claimed it was not paid all amounts due; Blue Cross claimed that that it overpaid the provider as a result of the provider’s failure to follow Blue Cross billing policies and procedures as required by the managed care and par provider agreements governing their relationship. The court held that, although some of the services were provided to ERISA plan participants, the determination of whether the service provider was overpaid or underpaid did not require any kind of benefit determination under any of the ERISA plans. Rather, the court reasoned, Blue Cross's claims were entirely separate from ERISA plan coverage and arose out of
the independent legal duty contained in Blue Cross’s policies and procedures regarding billing and, therefore, were not preempted by ERISA.

*Borroughs Corp. v. Blue Cross Blue Shield of Michigan*, Nos. 11-12565, 11-12557, 2012 WL 3887438, 53 Employee Benefits Cas. 2829 (E.D. Mich. Sept. 7, 2012). Employer and its self-funded health plan brought claims against claims administrator alleging that the claims administrator collected hidden fees from funds used to pay claims. After concluding that Blue Cross was a fiduciary because it exercised control over plan assets, the court held that the plaintiff’s state tort and contract claims were preempted by ERISA.

*Scripps Health v. Schaller Anderson, LLC.*, No. 12cv252 AJB (DHB), 2012 WL 2390760 (S.D. Cal. June 22, 2012). Plaintiff, the sponsor of a self-funded health benefit plan, sued the plan administrators for failure to apply discounts to services provided by in-network providers. Although plaintiff sued under ERISA, it also asserted ten state common law and statutory claims. Defendants moved to strike plaintiff’s common law claims as preempted by ERISA. The court found that plaintiff’s common law claims were not preempted. It explained that the claims, which alleged breach of an administrative services agreement and failure to pay claims properly, were not predicated on a denial of ERISA benefits or a breach of an employee health benefit plan. The Court, therefore, rejected defendants' motion.

2. Claims by Providers against Plans, Employers and Fiduciaries


*Feldmen's Medical Center Pharmacy Inc. v. Carefirst Inc*, No. WDQ-12-0613, 2012 WL 4787261 (D. Md. Oct. 5, 2012). Defendant insurer, Carefirst, publicly accused plaintiff, a pharmacy that dispensed specialty drugs for hemophilia, of fraud. Carefirst also refused to pay claims for medications provided by plaintiff to Carefirst's insureds. After plaintiff went out of business, it sued Carefirst and several other insurers, claiming that they had caused plaintiff's demise and participated in a scheme to direct their insureds to providers that charged less for hemophilia drugs. Defendants removed the case to federal court and sought dismissal of plaintiff's claims as preempted by ERISA. Plaintiff moved to remand the case to state court. The court granted plaintiff's motion for remand, finding that this case was about a scheme to defame and injure plaintiff not defendant's refusal to pay claims. Such a scheme, said the court, involves state law, not ERISA.

3. Medical Malpractice Cases

E. Severance Pay

*Dakota, Minnesota & Eastern Railroad Corp. v. Schiefler*, 857 F. Supp. 2d 866, 52 Employee Benefits Cas. 2102 (D. S.D. Aug. 1, 2012). Plaintiffs brought suit in federal court seeking to enjoin defendant from arbitrating his claim for payment of severance under an employment agreement executed by the parties. Plaintiffs invoked federal jurisdiction on the ground that the employment agreement was an "ERISA-governed" plan. The district court
dismissed the suit for lack of subject matter jurisdiction and the Eighth Circuit agreed. However, the Circuit Court remanded the case to the lower court to consider "alternate" theories of jurisdiction, such as whether defendant's arbitration demands were "demands for the payment of benefits under ERISA plans, as amended by the Employment Agreement". On remand, the lower court analyzed the defendant's claims under the three-pronged test enunciated in *Aetna Health, Inc. v. Davila*, 542 U.S. 200, 207 (2004). Finding that defendant's claim failed the *Davila* tests, the court concluded that defendant's claims arose under a "free standing" contract that merely tied a portion of the plaintiff's obligations to amounts that "would have been due" under ERISA plans sponsored by the plaintiff.

F. Wrongful-Discharge Claims

1. Common-Law Claims

*Harvey v. International Reading Ass’n, Inc.*, 838 F. Supp. 2d 244 (D. Del. Mar. 12, 2012). In an action filed by a former employee against his former employer asserting breach of contract and Section 1981 claims, the court rejected the employer’s claim that the employer’s breach of contract claim was preempted by ERISA (and further, that the employee failed to exhaust administrative remedies as required by ERISA). The court explained that where, as in this case, a plaintiff merely asserts that his loss of ERISA benefits as an element of his damages arising from his termination, state law claims are not pre-empted.

2. Employment Discrimination Laws

G. Fraud and Misrepresentation Claims

1. Circumstances Where State Law Claims Are Often Found Preempted

*Sanford v. TIAA-CREF Individual and Institutional Services*, No. 2:11-CV-122-KS-MTP, 2012 WL 627994, 53 Employee Benefits Cas. 2401 (S.D. Miss. Feb. 24, 2012) a plan participant executed a power of attorney to two individuals who, one day later, attempted to change the beneficiaries on the plan participant’s account to her siblings. The plan initially refused to change the beneficiary designation but later changed its position and, according to plaintiff, wrongfully distributed funds from the participant’s account while it was aware, or should have been aware, that the power of attorney was invalid. The court held that plaintiff’s fraud, breach of the duty of good faith and fair dealing, breach of contract, tortious breach of contract, bad faith, conversion, breach of fiduciary duty and negligence were preempted by ERISA because they clearly involve the right to receive benefits under the plan.

2. Circumstances Where Preemption Is Less Likely

*Nixon v. Vaughn*, No. 2:12-CV-00308, 2012 WL 4961461, 54 Employee Benefits Cas. 1173 (W.D. La. Oct. 16, 2012). Plaintiff and her sister were co-beneficiaries of their mother's 401(k). After the death of their mother, plaintiff's sister transferred plaintiff's share of the account to a new account, with the sister's address noted as the address for mailings. Thereafter, plaintiff's sister closed the new account and directed that the proceeds of this account be sent to the address on file, which was that of the sister. Plaintiff claimed that the sister forged plaintiff's
name on the check, without her knowledge or assent, and cashed it. Plaintiff filed suit, in state court, against her sister for fraudulent conversion. She also raised claims of negligence against the plan sponsor and the plan administrator. Defendants removed the case to federal court on the grounds of ERISA preemption and moved to dismiss plaintiff's claims for reasons including preemption. The court remanded the case to state court, finding that plaintiff's claims were not completely preempted because they could not have been raised under ERISA Section 502.

Stanback v. JPMorgan Chase Bank, No. 10-CV-04155 RRM RLM, 2012 WL 847426, 53 Employee Benefits Cas. 2223 (E.D.N.Y. Mar. 13, 2012). The plaintiff was informed by a human resources representative that she was entitled to maintain life insurance coverage on her ex-spouse by simply continuing to pay premiums. Relying on this advice, the plaintiff continued to pay the premiums until her ex-spouse’s death, but her claim for life insurance benefits was denied because, under the group life insurance plan, an ex-spouse is not eligible for coverage. The district court held that her claims for promissory estoppel, negligence and quantum meruit were not preempted by ERISA because she was not seeking enforcement of the plan, but was instead asserting a negligence claim based on incorrect information offered by defendant’s human relations officer, which she relied upon to her own detriment.

Franco v. Connecticut General Life Ins. Co., No. 07-cv-6039 (SRC)(PS), 2012 WL 209328 (D. N.J. Jan. 24, 2012). Plaintiff claimed that defendants had entered into a civil conspiracy to manipulate data so that they could pay lesser benefits. The court found that this claim related to the ERISA plan under which coverage was afforded and was, therefore, preempted under ERISA Section 514(a). The court also held that Section 514 of ERISA applies to non-fiduciary defendants as well as to fiduciaries.

H. Common-Law and Statutory Regulation of Health Coverage and Delivery of Medical Services

I. Domestic Relations Laws

Andochick v. Byrd, No. 1:11-CV-739, 2012 WL 1656311 (E.D. Va. May 9, 2012). The court held that ERISA does not preempt enforcement of a provision in a marital settlement agreement that would divest benefits from the plan document’s designated beneficiary. Noting that the Supreme Court left the question open in Kennedy v. Plan Administrators of DuPont, 555 U.S. 285 (2009), the court concluded that permitting suit against beneficiaries after benefits have been paid does not implicate any concern of expedited payment or undermine any core objectives of ERISA. To hold otherwise would shield the beneficiary of his obligations based on rights that he freely contracted away.

J. State Wage Payment and Collection Statutes, Prevailing Wage Laws and Apprenticeship Statutes

1. Wage Payment and Collection

paychecks without valid wage assignments and depositing these monies in a fund administered by the employer's benefits program. Plaintiffs alleged that the employer's actions violated state laws and demanded an accounting. The employer removed the case to federal court claiming complete ERISA preemption. Plaintiffs moved to remand and amended their complaint to "clarify" that their claims related only to deductions for "non Plan" benefits such as vacation, holiday, work clothing and apprenticeship and training benefits. Such benefits were paid directly by the employer and reimbursed from the fund. After discussion, the court found that plaintiffs' claims did not seek benefits from an ERISA plan, assert violations of ERISA, or require interpretation of an ERISA plan. The court found that the state law claims were not preempted because they sought monies due under state law. The court recognized that the plaintiffs' claim for an accounting could have been considered a claim for breach of fiduciary duties under ERISA, but determined that remanding the case was more "prudent" under the circumstances.

2. Prevailing Wage and Apprenticeship Laws

K. State Tax Laws

L. State Escheat and Unclaimed-Property Laws

VIII. ERISA’s Interrelationship with Other Federal Laws

A. Federal Bankruptcy Laws

B. Federal Securities Laws