

Publications

Eleventh Circuit Preemption Decisions

ATTORNEYS & PROFESSIONALS

Jennifer Eller

jeller@groom.com

202-861-6604

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Late in 2001, the Court of Appeals for the Eleventh Circuit reversed a lower court decision holding that the Alabama tort of bad faith refusal to pay an insurance claim was “saved” from ERISA preemption. *Gilbert v. Alta Health*, Case No. 01-10829-GG (11th Cir. 2001).

The plaintiff, Bill Gilbert, was insured under a group insurance policy issued by Alta Health & Life Insurance Company. After obtaining medical services, Gilbert sought reimbursement of claims filed with Alta, which were paid by Alta at the usual and customary rate. Amounts claimed in excess of the usual and customary rate were denied. Gilbert then brought an action under Alabama law against Alta alleging breach of contract and bad faith refusal to pay.

The lower court concluded that the Alabama law regulated insurance and was therefore “saved” from ERISA preemption. The lower court relied on cases construing a footnote in *Unum Life Ins. v. Ward*, 526 U.S. 358 (1999) to mean that the Court had implicitly overruled its holding in the landmark preemption case of *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987). Far from questioning the vitality of *Pilot Life*, the Eleventh Circuit in *Gilbert* closely followed *Pilot Life* in holding that the Alabama Law in question is preempted by ERISA.

The court found that ERISA’s savings clause must be construed in light of the principle articulated in *Pilot Life*, that Congress intended that the civil enforcement provisions of ERISA be exclusive. The court further determined that, under the tests applied in *Pilot Life*, *Unum*, and Eleventh Circuit precedent, the Alabama law was not saved because it did not regulate insurance under a “common sense view,” did not transfer or spread policyholder risk, was not an integral part of the relationship between the insurer and the insured, and did not exclusively regulate insurance because the roots of the tort were developed from general principles of tort and contract law.

As if to reiterate the point, on January 23, 2002, a different panel of judges in a different Eleventh Circuit case also held that the same Alabama bad faith law is preempted by ERISA. *Walker v. Provident Life & Accident Ins. Co.*, Case No. 01-121000 (11th Cir. 2002).

Groom Law Group, Chartered filed an amicus curiae brief in *Gilbert* on behalf of the American Association of Health Plans, the Health Insurance Association of America, the American Benefits Council, and the National Federation of Independent Businesses of Alabama.

[Amicus Brief on Alta Health](#)[Download](#)