Amicus brief on Alta Health & Life Ins. v. Gilbert, prepared by Groom Law Group

Date: 4/1/2001

ISSUE PRESENTED

Whether the district court erred in finding that the Alabama common law tort of bad faith refusal to pay a claim is not preempted by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), where the court failed to apply established principles of preemption requiring a determination of whether state laws, even those arguably regulating insurance, conflict with ERISA before finding that such laws are not preempted.

INTEREST OF THE
AMERICAN ASSOCIATION OF HEALTH PLANS,
THE HEALTH INSURANCE ASSOCIATION OF AMERICA, THE AMERICAN BENEFITS COUNCIL AND THE NATIONAL FEDERATION OF INDEPENDENT BUSINESSES/ALABAMA

The American Association of Health Plans, Inc. ("AAHP") is the national association for the managed health care community. Its membership includes health maintenance organizations (HMOs), preferred provider organizations (PPOs), third party health benefit administrators, health care utilization review organizations, prepaid limited health service plans, and other integrated health care delivery systems. AAHP represents more than 1000 managed health care organizations serving nearly 140 million Americans. AAHP's mission is to advance health care quality and affordability through leadership in the health care community, advocacy, and the provision of services to member health plans.

The Health Insurance Association of America ("HIAA"), also based in Washington, D.C., is one of the largest associations of health insurance companies in the world. HIAA is an advocate for the private, market-based health insurance system. Its more than 260 members provide medical expense and supplemental insurance, as well as long-term care insurance and disability income protection to more than 115 million Americans. HIAA develops and advocates federal and state policies that build upon the health care system's quality, affordability, accessibility, and responsiveness.

The American Benefits Council (the "Council") is a broad-based, non-profit trade association founded in 1967 to protect and foster the growth of this nation's privately sponsored employee benefit plans. The Council's members include both small and large employer-sponsors of employee benefit plans, including many Fortune 500 companies. Its members also include many employee benefit plan support organizations, such as actuarial and consulting firms, insurers, banks, investment firms, and other professional benefit organizations. Collectively, its more than 250 members sponsor and administer plans covering more than 100 million plan participants and beneficiaries.

The National Federation of Independent Businesses/Alabama ("NFIB/Alabama") is based on Montgomery, Alabama and is part of the nation's largest small-business advocacy group. NFIB/Alabama has more than 12,000 members employing approximately 250,000 people in the state. Many of Alabama's businesses are small; over 95% employ fewer than 100 people.

Well over 100 million Americans participate in ERISA-covered group health and retirement plans, all of which are voluntarily sponsored by employers and labor unions. ERISA reflects "competing congressional purposes, such as Congress's desire to offer employees enhanced protection for their benefits . . . and its desire not to create a system that is so complex that administrative costs, or litigation expenses, unduly discourage employers from offering welfare benefit plans in the first place." Varity Corporation v. Howe, 516 U.S. 489, 497 (1996). The membership of AAHP, HIAA, the Council and NFIB/Alabama represent key stakeholders under ERISA -- large and small employers that sponsor plans, insurers, managed care organizations and administrators -- and are thus uniquely situated to

evaluate the impact on voluntarily sponsored benefit plans if the district court's decision in Gilbert v. Alta Health & Life Ins. Co., 122 F.Supp. 2d 1267 (N.D. Ala. 2000) is not reversed.

"One of the principal goals of ERISA is to enable employers 'to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits.'" Egelhoff v. Egelhoff, ____ U.S. ___, 121 S.Ct. 1322, 1328 (2001) (quoting Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 9 (1987)). "Uniformity is impossible, however, if plans are subject to different legal obligations in different States." Id.

Simply put, the district court's decision eviscerates Congress's goal in adopting ERISA and ignores numerous Supreme Court decisions that have settled this issue. If the district court's decision is allowed to stand, a patchwork scheme of ERISA enforcement will emerge. For self-insured employee benefit plans, ERISA would continue to provide an exclusive scheme of remedies. In contrast, for insured employee benefit plans, each state would be free to adopt different remedies under the rubric of state insurance law. The result would be a state-by-state scheme of enforcement for all ERISA plans funded with insurance contracts -- including both pension plans and health plans -- many of which cover participants that reside in different states. Clearly, this conflicts with Congress's goal of uniform administration of employee benefit plans under ERISA and it would penalize employers who seek to provide health benefits through insured arrangements.

STATEMENT OF FACTUAL AND LEGAL BACKGROUND

ERISA is a federal statute that comprehensively regulates pension and welfare benefit plans, including group health plans, sponsored by private employers and unions. 29 U.S.C. §§ 1102(1), 1103.

ERISA imposes significant duties on persons that sponsor and administer employee benefit plans, including requiring that plan assets be held in trust, imposing a strict duty of loyalty on plan fiduciaries, and prohibiting fiduciaries from engaging in "prohibited transactions." 29 U.S.C. §§ 1103-1106. ERISA imposes an "elaborate scheme" of reporting and disclosure, requiring plan administrators to file annual reports with the government and make disclosures to plan participants. See Curtiss-Wright Corp. v. Schoonejongen, 514 U.S. 73, 83 (1995); 29 U.S.C. §§ 1022-1024.

ERISA provides a "reticulated" scheme of public and private enforcement to ensure compliance with its substantive requirements. See generally Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134, 146 (1985); 29 U.S.C. § 1132. Each of the nine causes of action set forth in section 502(a) of ERISA specifically enumerate who may bring a suit under ERISA and what relief may be granted. 29 U.S.C. § 1132(a).

Section 514 of ERISA includes an express preemption provision which provides that title I of ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C § 1144(a). This broad statement, known as the "relates to" clause, is qualified by a "savings" clause providing that "nothing in this title of ERISA shall be construed to exempt or relieve any person from any law of any State which regulates insurance." 29 U.S.C. § 1144(b)(2)(A). Thus, a State law that "relates to" an ERISA plan is generally preempted, while a State law that "regulates insurance" may be "saved" from preemption despite its relation to an ERISA plan.

The Supreme Court and appeals courts have consistently characterized ERISA's remedy scheme as "exclusive." E.g., Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41 (1987). Thus, even where a state law cause of action arises under a state insurance law that may fit within the savings clause, the cause of action is nonetheless preempted.

In the instant action, plaintiff Gilbert was insured under a group insurance policy issued by Alta Health & Life Insurance Company ("Alta"). 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 district court analyzed whether Gilbert's state tort claim is saved from ERISA preemption. Gilbert v. Alta Health & Life Ins. Co., 122 F.Supp. 2d 1267, 1271 (N.D. Ala. 2000). The district court assumed that Alabama's tort of bad faith relates to an employee benefit plan within the meaning of section 514(a) of ERISA. Id. Relying on UNUM Life Ins. Co. v. Ward, 526 U.S. 358 (1999), the district court then concluded that the Alabama tort is a law regulating insurance and, thus, is saved from preemption by the insurance savings clause of section 514(b). Gilbert, 122 F.Supp. 2d at 1272. The district court did not, however, address whether the "saved" insurance law should nonetheless be preempted because of the exclusive remedy scheme of section 502 of ERISA.

SUMMARY OF ARGUMENT

This brief presents two central arguments.

First, it was Congress's fundamental goal in adopting broad preemption provisions under ERISA to ensure nationally uniform plan administration. While the Supreme Court's approach to preemption has evolved over time, each time it has considered the issue the Court has emphasized the closely tied principles of ensuring uniformity in plan administration and the exclusivity of ERISA's remedial scheme.

These clear congressional policy choices would be undermined if different remedies applied to insured and self-insured ERISA plans. If each state were permitted to adopt and apply tort remedies to insured ERISA plans, a 50 state scheme of remedies would apply to an insurer's administrative decisions to pay or deny claims for benefits, leading to inconsistent decision making in the precise area in which Congress most desired uniformity. Employers that choose to fund benefit programs through the purchase of insurance would be singled out for adverse treatment. Many small employers may drop coverage altogether.

The composition of ERISA's remedies is a policy choice that Congress should make and, indeed, is now considering in the context of a comprehensive federal Patients' Bill of Rights. The district court's decision must be reversed to reserve to Congress its proper role as policymaker, and to preserve the validity of numerous Supreme Court and Eleventh Circuit decisions which the district court failed to apply.

This brief also addresses the district court's complete failure to follow Supreme Court guidance which makes clear that even laws fitting within the confines of ERISA's savings clause are subject to more general federal preemption principles.

The Supreme Court has broadly applied these settled federal conflicts preemption principles in the context of state law remedies that, but for preemption, would supplement the detailed remedial scheme provided in ERISA section 502. In its early landmark decision in Pilot Life, the Supreme Court articulated that "[t]he deliberate care with which ERISA's civil enforcement remedies were drafted and the balancing of policies embodied in its choice of remedies argue strongly for the conclusion that ERISA's civil enforcement remedies were intended to be exclusive." Pilot Life, 481 U.S. at 54.

The Supreme Court has never articulated a different analysis for insured ERISA plans, despite ample opportunity to do so. Indeed, Pilot Life makes clear that even a law purporting to regulate insurance would be preempted if the law provided any type of remedy that conflicts with ERISA's detailed enforcement scheme. Pilot Life, 481 U.S. at 57. Many circuit courts have properly applied the Supreme Court's teachings. E.g., Corporate Health Ins., Inc. v. Texas Dept. of Ins., 215 F.3d 526, 538 (5th Cir. 2000); Kanne v. Connecticut General Life Ins. Co., 867 F.2d 489, 494 (9th Cir. 1988).

The district court mistakenly relied on UNUM as overturning the Supreme Court's settled ERISA preemption principles. In UNUM, the underlying cause of action was maintained by a plan participant under ERISA section 502(a)(1)(B) to recover benefits from an insured health plan. UNUM, 526 U.S. at 377. The Supreme Court simply found that California's notice-prejudice rule, which supplied the rule of

decision, was saved from preemption by the savings clause, but it did not revisit its prior decisions that ERISA provides an exclusive set of remedies. UNUM, 526 U.S. at 376-77.

This court's recent decisions have properly confirmed the narrow scope of UNUM. See Butero v. Royal Maccabees Life Insurance Company, 174 F.3d 1207 (11th Cir. 1999) (state law bad faith refusal to pay claim preempted because of the "super preemptive" effect of section 502). Id. at 1215. The rationale for the Butero holding -- the exclusive remedy scheme of section 502 of ERISA -- is in no way disturbed by UNUM.

ARGUMENT

AAHP, HIAA, the Council and NFIB/Alabama strongly oppose the district court's decision in all respects. However, this brief does not analyze in detail whether the district court was correct that the Alabama tort was saved applying the Supreme Court decision in UNUM, 526 U.S. 358.

Instead, this brief first analyzes the sweeping nature of the district court's decision, and how it undermines key policy choices that the Supreme Court has consistently found were made by Congress in adopting ERISA. Second, this brief addresses the district court's complete failure to apply settled principles of preemption to an otherwise saved insurance law and recognize the exclusivity of ERISA's civil enforcement scheme.

I. Creating an exception to ERISA's exclusive remedy scheme for causes of action arising under state insurance law is a policy determination best left to Congress and, indeed, one which Congress is now considering.
The Supreme Court has struggled with the breadth of ERISA preemption in many contexts and its teachings have been refined over time. However, the Supreme Court has never strayed from two fundamental concepts rooted in clear policy decisions made by Congress.

First, Congress intended to preempt state law wherever necessary to ensure uniformity in the administration of ERISA plans, many of which cover participants residing in many states. The Court has relied on this principle in interpreting the express preemption provisions of section 514(a). See, e.g., Egelhoff, at 1325 (state statute law preempted where conflicts with ERISA's goal of "nationally uniform plan administration"); New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 657 (1995) (same). The Court has also relied on this principle in applying traditional conflicts preemption analysis. See Boggs v. Boggs, 520 U.S. 833, 840 (1997).

Second, the Court has repeatedly concluded that Congress intended ERISA to provide the exclusive remedy for claims made with respect to ERISA covered plans. See Pilot Life, 481 U.S. at 54; Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58 (1987) (state law causes of action are removable to federal court because ERISA's exclusive remedy scheme completely preempts state law); Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 143 (1990).

Of course, these two cornerstones of Supreme Court preemption law are harmonious. Providing a single and exclusive set of federal remedies is essential to fulfilling Congress's goal of nationally uniform plan administration. And, for this goal to be realized, it is essential that a single set of remedies apply to both insured and self-insured ERISA plans.

Allowing 50 states to adopt and apply tort remedies applicable only to insured ERISA plans will create different remedies from state to state for an insurer's administrative decisions to pay or deny claims for benefits. Allowing each state to prescribe its own set of remedies for insured plans would create a patchwork of inconsistent decision making in the precise area in which Congress most desired uniformity.

Moreover, allowing participants to pursue state insurance law causes of action would disadvantage employers that choose to fund their benefit plans through the purchase of insurance. Under the rule announced by the district court here, only employers that choose to fund their group health plans with

insurance policies would bear the expense of state law compensatory and punitive damages remedies available to participants. Employers that choose to self-insure their group health plans would not be exposed to such expenses. Thus, the district court's decision would steer employers that sponsor employee benefit plans towards self-funded group health plans rather than insured group health plans. However, small employers would not be able to avoid the litigation costs of the district court's decision by self-insuring because a significant number of employees is required to effectively pool risk. Thus, many small employers may drop coverage altogether.

These are policy choices that Congress should make. Indeed, the Supreme Court has told us that these are the types of choices Congress already made when adopting ERISA in 1974. Pilot Life, 481 U.S. at 54. In fact, just recently, in Pegram v. Herdrich, the Supreme Court refrained from expansively applying ERISA's scheme of regulation to certain practices of health insurers because it recognized that Congress was best suited to make such policy choices. 530 U.S. 211, 234 (2000). And, Congress is now debating many different proposals to augment ERISA's enforcement scheme in the context of a federal "Patients Bill of Rights." These proposals vary from adding limited new federal causes of action for damages to ERISA's current enforcement scheme, to broadly amending ERISA's preemption provisions to allow state law causes of action for damages, or a combination of both. See, e.g., S. 283 107th Cong. § 302 (2001) (providing for state remedies for "medically reviewable" claims, and federal remedies for non-medically reviewable claims).

The district court not only ignored settled Supreme Court law and the law of the Eleventh Circuit regarding the exclusivity of ERISA's remedies (discussed below), but it effectively acted as policymaker -- usurping Congress's role of "balancing [] the need for prompt and fair settlement procedures against the public interest in encouraging the formation of employee benefit plans." Pilot Life, 481 U.S. at 54. Applying Supreme Court precedent and its own precedent, this court should reverse the district court and let Congress make the fundamental policy choices of determining what remedies are appropriate for employer sponsored employee benefit plans.

II. The District Court erred when it held that Alabama's tort of bad faith refusal to pay an insurance claim is not preempted by ERISA by failing to apply established principles of federal preemption and the exclusivity of ERISA remedies.

A. In analyzing whether state law is preempted under ERISA, the U.S. Supreme Court and other circuit courts have all concluded that a court must first apply the express preemption provisions of ERISA section 514 and, if the law is saved from express preemption, apply more general federal preemption principles.

ERISA includes an express preemption provision which provides that title I of ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C § 1144(a). However, this "relates to" clause is qualified by the insurance "savings" clause, which saves from preemption state laws that regulate the business of insurance. 29 U.S.C. § 1144(b)(2)(A). Thus, a state law that "relates to" an ERISA plan may not be preempted if the law regulates insurance.

The Supreme Court has made it clear, however, that even laws fitting within the confines of ERISA's savings clause are subject to more general federal preemption principles. If the state law at issue conflicts with ERISA it is preempted, regardless of whether it is a law regulating insurance. Indeed, the Court explained that --

we discern no solid basis for believing that Congress, when it designed ERISA, intended fundamentally to alter traditional preemption analysis. State law governing insurance generally is not displaced, but 'where [that] law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress,' federal preemption occurs.

John Hancock Mutual Life Ins. v. Harris Trust & Sav. Bank, 510 U.S. 86, 99 (1993) (internal quotations omitted).

The Supreme Court has broadly applied these settled federal conflicts preemption principles to state laws that provide remedies that could otherwise supplement the "reticulated" set of remedies provided in section 502 of ERISA.

In Pilot Life, the Court held that a Mississippi common law claim of bad faith against an insurer for failure to pay benefits under an ERISA plan was preempted by ERISA because it "related to" an ERISA plan and was not "saved" from preemption as a law regulating insurance. Pilot Life, 481 U.S at 55. Although the Court in Pilot Life found the state law at issue did not regulate insurance as described in the savings clause, it did not end its inquiry with the savings clause analysis. Instead, the Court further examined the "language and structure of the civil enforcement provisions" and the statute's legislative history, in which Congress declared that ERISA should have the same preemptive force as the Labor Management Relations Act, and concluded --

The deliberate care with which ERISA's civil enforcement remedies were drafted and the balancing of policies embodied in its choice of remedies argue strongly for the conclusion that ERISA's civil enforcement remedies were intended to be exclusive.

Id. at 54.

Importantly, Pilot Life was not the Supreme Court's first major savings clause case. Two years before Pilot Life, the Court found that the savings clause saved a state law that required that health insurance policies provide mental health benefits. Metropolitan Life Ins. Co. v. Mass., 471 U.S. 724 (1985). Significantly, the state mandated benefits law did not provide a new or different remedy for ERISA plan participants. Mindful of its decision in Metropolitan Life, the Court in Pilot Life made abundantly clear that even a law purporting to regulate insurance would be preempted if the law provided any type of remedy that conflicts with ERISA's detailed enforcement scheme. Pilot Life, 481 U.S. at 57.

The Supreme Court reinforced its determination that ERISA provides the exclusive set of remedies in Taylor, 481 U.S. 58, decided on the same day as Pilot Life. In Taylor, the court found that a complaint filed in state court alleging, on its face, only state law causes of action were properly removable to federal court under the doctrine of "complete preemption." It found applicable the rule that "Congress may so completely pre-empt a particular area that any civil complaint raising this select group of claims is necessarily federal in character." Taylor at 63. Thus, any suit attempting to state a state law cause of action is "purely a creature of federal law notwithstanding the fact that state law would provide a cause of action in the absence of [federal law]." Taylor, 481 U.S. at 64. Importantly, the Taylor decision rests on the same fundamental conclusion as Pilot Life -- that ERISA's remedies are so comprehensive that Congress's intent to provide an exclusively federal set of remedies is manifest. See also Ingersoll-Rand Co., 498 U.S. at 143 (applying Pilot Life and Taylor, the Court finds that even without express preemption under section 514(a), state law cause of action would be preempted because it conflicts with the exclusive remedies provided under section 502 of ERISA).

Many circuit courts have properly applied the Supreme Court's teachings in Pilot Life and Taylor, concluding that, even where a state law regulates insurance within the meaning of the savings clause, the state law is nonetheless preempted if the law conflictswith ERISA's enforcement scheme.

In Corporate Health, the Fifth Circuit considered, in part, whether the Texas HMO law's external review requirement was preempted by ERISA. The Texas law provided for a mechanism by which participants can seek independent review of health care determinations to decide whether the determinations were appropriate and medically necessary. The court determined that the law "related to" ERISA plans, and that the law regulated insurance as described in the savings clause. Corporate Health, 215 F.3d at 538. The court, however, correctly determined that the savings clause was not the end of the preemption analysis:

Our analysis does not end here, however, because even if the provisions would otherwise be saved, they may nonetheless be preempted if they conflict with a substantive provision of ERISA.

Id. The Fifth Circuit recognized that in Pilot Life, the Supreme Court determined that ERISA's enforcement scheme was intended to supplant both directly conflicting remedial schemes and also state law remedies providing alternatives to the remedies available under ERISA section 502. Id. at 539. The court found that the independent review provisions at issue in that case, while not creating a cause of action for the denial of benefits, did create an alternative mechanism through which participants could seek payment of plan benefits. Id. Thus, the independent review provisions "conflict with ERISA's exclusive remedy and cannot be saved by the savings clause." Id.

Faced with similar state law remedies, other courts have reached the same conclusion as the Fifth Circuit in Corporate Health. See Kanne v. Connecticut General Life Ins. Co., 867 F.2d 489, 494 (9th Cir. 1988) (court assumes, without deciding that claims based on statutory prohibitions on unfair insurance practices are saved, yet finds "inescapable" the conclusion that the claims are preempted because to allow them would violate Congress's intent that ERISA's civil enforcement provisions provide exclusive remedies for participants); United of Omaha v. Business Men's Assurance Co., 104 F.3d 1034, 1039-42 (8th Cir. 1997) (proper preemption analysis includes examination of ERISA section 514 and then consideration of whether law conflicts with ERISA).

The district court in this case failed completely to apply the appropriate, and well-established analysis that ERISA's exclusive remedy scheme preempts state law causes of actions, including the Alabama tort at issue, even if such claims fall within ERISA's savings clause.

B. The Supreme Court's decision in UNUM does not signal a reversal of the Court's established views with respect to the preemption of state law causes of action that supplement the exclusive civil remedy scheme afforded under ERISA section 502.
The district court mistakenly relied on UNUM as overturning the Supreme Court's settled ERISA preemption principles. A careful examination of UNUM demonstrates that the Court did no such thing.

The underlying cause of action in UNUM was an action maintained by a plan participant under ERISA section 502(a)(1)(B) to recover benefits from an insured health plan. UNUM, 526 U.S. at 377. UNUM argued that the participant's claim was precluded because it had not been timely filed under the terms of the insurance policy. The plaintiff argued that, under California's notice-prejudice rule, UNUM would have to demonstrate actual prejudice by the participant's untimely claim. UNUM argued that the notice prejudice rule was preempted under section 514 and even if saved under the savings clause, was nevertheless preempted because the rule conflicted with ERISA section 502's exclusive remedial scheme.

The Supreme Court, however, concluded that California's notice-prejudice rule regulated insurance and was saved from preemption by the savings clause. Id. at 364. The Court considered whether the California notice-prejudice rule at issue in that case conflicted with ERISA. Id. at 376. In doing so, the Court applied the settled principle that state laws that fall within the savings clause are nonetheless subject to more general preemption principles.

Importantly, while the Court found that the notice-prejudice rule was not in conflict with section 502(a), the Court made it clear that --

the issue [of exclusive remedies] is not implicated here. Ward sued under §502(a)(1)(B) 'to recover benefits due . . . under the terms of his plan.' The notice-prejudice rule supplied the relevant rule of decision for Ward's § 502(a) suit. The case therefore does not raise the question whether § 502(a) provides the sole launching ground for an ERISA enforcement action.

UNUM, 526 U.S. at 376-77 (emphasis added). Simply put, the Court did not implicitly overrule its prior decisions that ERISA provides an exclusive set of remedies for employee benefit plans. It narrowly held that a rule of decision supplied by state insurance law could be applied to decide an issue that arose in an action for benefits under ERISA section 502(a)(1)(B).

The limited scope of the Supreme Court's decision in UNUM is confirmed by this Court's own recent decisions. After UNUM, this court has continued to apply the Supreme Court's exclusive remedy analysis under ERISA section 502 to state laws that may be saved under the insurance savings clause. In Butero v. Royal Maccabees Life Insurance Company, 174 F.3d 1207 (11th Cir. 1999), this court considered a claim against an insurer alleging bad faith refusal to pay and concluded that dismissal and removal of the state law claim was proper. Relying on Taylor, this court concluded that the state law claims were preempted because of the "super preemptive" effect of section 502. Id. at 1215. Accord Whitt v. Sherman Int'l Corp., 147 F.3d 1325, 1329 (11th Cir. 1998) (ERISA provides the exclusive remedy for the recovery of benefits under an ERISA plan); Hall v. Blue Cross/Blue Shield, 134 F.3d 1063, 1065 (11th Cir. 1998) (same).

The central rationale for the Butero holding -- the exclusive remedy scheme of section 502 of ERISA -- is in no way disturbed by UNUM. As a result, this court should apply Butero and reverse the district court's decision below..

C. The Alabama tort of bad faith refusal to pay is preempted applying a traditional "conflicts" preemption test.
In Pilot Life and Taylor, the Supreme Court established the principle that ERISA section 502 provides the exclusive remedy for claims in connection with ERISA plans and completely preempts state law causes of action. The Court's determination that ERISA's exclusive enforcement scheme completely preempts state law remedies is consistent with the application of traditional federal "conflicts" preemption principles.

The Supreme Court's recent decision in Boggs v. Boggs, 520 U.S. 833 (1997), provides that "[c]onventional conflict preemption principles require pre-emption 'where compliance with both federal and state regulations is a physical impossibility, . . . or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" Id. at 844 (emphasis added) (citations omitted).

In Boggs, the Supreme Court considered whether ERISA preempts a state law allowing a pension plan participant's former spouse to transfer the right to the assets of the pension plan away from the participant's current spouse, despite ERISA's rules regarding qualified joint and survivor annuities. Applying traditional conflicts preemption principles, the Boggs Court explained that because certain provisions of ERISA are designed to protect certain community property interests (e.g., the interests of a surviving spouse), there is a "strong implication that other community property claims are not consistent with the statutory scheme. ERISA's silence with respect to the right of a nonparticipant spouse to control pension plan benefits by testamentary transfer provides powerful support for the conclusion that the right does not exist." Id. at 847 (citing Russell, 473 U.S. at 147-48).

Applying the same reasoning, the Alabama tort of bad faith refusal to pay plainly conflicts with ERISA's substantive provisions. As with Boggs, application of both federal and state laws may not be a "physical impossibility." However, ERISA's detailed civil enforcement scheme, providing nine separate causes of action, none of which provide for compensatory or punitive damages payable to participants, clearly indicates that allowing participants to pursue state law causes of action would frustrate Congress's deliberate choice to provide an exclusive set of remedies under ERISA section 502. See Russell, 473 U.S. 134. Indeed, in Pilot Life the Court recognized that Congress --

set forth a comprehensive civil enforcement scheme that represents a careful balancing of the need for prompt and fair settlement procedures against the public interest in encouraging the formation of employee benefit plans. The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected under ERISA.

Pilot Life, 481 U.S. at 54. The district court's decision below should be reversed because it does what the Supreme Court has consistently refused to do -- imply new remedies to ERISA's exclusive remedy scheme.

CONCLUSION

Based on the foregoing, amicus American Association of Health Plans, Health Insurance Association of America, the American Benefits Council, and the National Federation of Independent Businesses/Alabama respectfully submit that the decision of the district court should be reversed.

Louis Saccoccio
American Association
of Health Plans1129 Twentieth Street,
NW Suite 600 Washington, D.C. 20036
(202) 778-3210

William F. Hanrahan
Jon W. Breyfogle
Jennifer E. Eller
Groom Law Group,
Chtd. 1701 Pennsylvania Ave.,
NW Washington, D.C. 20006
(202) 857-0620Lynn Dudley
American Benefits Council
1212 New York Ave., NW
East Tower Suite 1250
Washington, D.C. 20005
(202) 289-6700

Jeffrey Gabardi
Health Insurance Association
of America
555 13th Street, NW,
Washington, D.C. 20004
(202) 824-1621

National Federation of Independent Businesses/Alabama
400 S. Union Street
Suite 335
Montgomery, Alabama 36104
(334) 264-2261

April 24, 2001

Counsel for Amicus Curiae
American Association of Health Plans
Health Insurance Association of America
American Benefits Council
National Federation of Independent
Business/Alabama