Abstracts of Signi cant Cases Bearing on the Regulation of Insurance

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United States Supreme Court

California v. Texas, S.Ct. ( )

In its edition, the *J , I , R ,* reported on *T . U S* , F d (th Cir.), where a group of states led by Texas sued the federal government challenging the constitutionality of the Patient Protection and Affordable Care Act ("ACA"). Plaintiffs argued that the individual mandate requiring all citizens to have health insurance is unconstitutional and is not severable from the entire Act, therefore, the entire law should be invalidated. The issues raised were:) did Plaintiffs' have standing to challenge the individual mandate;) did the House of Representatives have standing to intervene;) is the individual mandate constitutional; and) even if the court nds that the individual mandate is unconstitutional, is it severable and whether the remaining provisions of the ACA should remain in effect.

The Fifth Circuit held that both the House of Representatives and Plaintiffs had standing, as there is a live case and controversy, and the individual mandate is unconstitutional. The Fifth Circuit remanded the case to the district court to "explain with more precision what provisions of the post- ACA are indeed inseverable from the individual mandate." In January , the General Counsel of the House of Representatives led a petition for a writ of certiorari in the United States Supreme Court and a motion to expedite consideration of the certiorari petition. The Supreme Court ordered the Plaintiffs to le a response to this motion. On January , , the Supreme Court denied the motion to expedite consideration of the certiorari petition. On March , , the Court agreed to hear the case during the - term reviewing both the severability and standing issues raised by the Fifth Circuit. Both California and Texas petitioned review of the Fifth Circuit's decision and the Supreme Court consolidated both cases in the present case. In a - decision, the Court reversed the Fifth Circuit ruling holding that Texas and other states did not have standing to bring a challenge to the individual mandate because the states cannot show a past or future injury. The Court did not rule on the constitutionality of the individual mandate.

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United States District Courts

Maine

Martin v. Nat'l Gen. Ins, Co., No. : -cv- -GZS,
WL , at * (D. Me. Nov. ,)

Defendant, National General Insurance Company, issued a homeowner's insurance policy to Plaintiff. The policy's coverage extended from January , , through January , . The policy included a condition that no action can be brought against Defendant unless there has been full compliance with all the terms with the policy and the action is started within two years after the date of loss.

On March , , a water pipe froze and burst in Plaintiff's home causing damage to the home and its contents. Plaintiff led a claim with Defendant the same day. Defendant provided Plaintiff with two proofs of loss, one for the contents of Plaintiff's home and one for the home itself. The proofs of loss stated that Defendant would compensate Plaintiff $, . for the contents damage and $, . for the home damage. Defendant paid for these losses. The policy also allowed Plaintiff to lowed Plaintiftw

Defendant's Dormant Commerce Clause claim failed because "Maine's foreign-insurer statute of limitations falls within the ambit of the McCarran-Ferguson Act's protection, and so Defendant's challenge to it as a violation of the Dormant Commerce Clause fails "because §

nonrenewal of Plaintiff's policy, and that Plaintiff's damages were not covered by the policy.

In the present case, Plaintiff appealed the trial court's decision arguing that the re loss is covered because Defendant failed to notify Plaintiff of its intention not to renew the policy as required by Section -A. Defendant argues that the re loss is not covered because it occurred after they policy term expired. The court held that "Section -A( ) requires a surplus lines insurer to give written notice of its intent either to cancel a policy or not to renew a policy at least fourteen days before the effective date of the cancellation or nonrenewal" and the court remanded the case back to the trial court. Id. at .

Nebraska

Hauptman, O'Brien, Wolf, & Lathrop, P.C. v. Auto-Owners Ins. Co., N.W. d (Neb.)

Defendant issued an automobile insurance policy to Plaintiff's client, Charlyn Imes. The

common fund doctrine. The court held that Neb. Rev. Stat. § - , . only provides that an insurer is entitled to “subrogation for medical payments coverage under an automobile liability policy, but it is silent as to attorney fees.” / . at .

Nebraska Dental Ass’n v. Eric Dunning, No. CI - , at * (Dec. ,)

Plaintiff, a group of Nebraska dentists, led a lawsuit in the District Court of Lancaster County against the Nebraska Department of Insurance (“Department”) for the court to determine when dental services are “covered” under group dental plans or contracts. Neb. Rev. Stat. § - and Neb. Rev. Stat. § - , prohibit dentists and insurers from negotiating prices for services that are not “covered” by their contract. After the state legislature passed these statutes, dentists and insurers disagreed about when certain procedures are “covered” by the contract. In response, the Department issued a notice providing two interpretations of “covered service,” and allowed dental plans .*5 (/T1_1 0 594.92 Tied(our)_1 wad inssinterpr)s tiow Tm e Tm [(ae,)7 eitherque Lancasthe61

challenging the rate-increase caps. Plaintiff argues that the caps were and exceeded Defendant's statutory authority. The trial court dismissed Plaintiff's claim and this appeal followed.

On appeal, Plaintiff argues that the amended regulations impair its contractual rights in violation of the contract and takings clauses of the State and Federal Constitutions and exceed Defendant's statutory authority "to issue reasonable regulations to promote premium adequacy and to protect policyholders in the event of substantial rate increases." / . at . The court reversed the trial court's decision, holding that the amended regulations were because "they are not reasonable rules that either promote premium adequacy or protect policyholders in the event of substantial rate increases." / . at . The court also stated that due to its ruling that the amended regulations exceeded Defendant's authority, it did not address Plaintiff's remaining claims.

Pennsylvania

In Re: Penn Treaty Network Am. Ins. Co., A. d
(Pa. Commw. Ct. July ,)

Pennsylvania Insurance Commissioner in her capacity as Statutory Liquidator of Penn Treaty Network America Insurance Company ("Penn Treaty") and American Network Insurance Company ("ANIC") led a declaratory judgment action to have the court declare "that she is authorized under Article V of [t]he Insurance Department Act of (Article V) to allocate assets from [both Penn Treaty and ANIC's] estates to pay policyholder claims for bene ts that exceed applicable statutory guaranty association limits." / . at . The court denied the commissioner's motion stating that there is "simply no statutory authority for this well-intentioned proposal." / . at . The court also held that pursuant to Article V and the Pennsylvania Life and Health Insurance Guaranty Association Act the current systems function well and that "policyholders who experience a bene t-triggered event. . . are protected." / . The court further stated that policyholders must look to their guaranty associations for payment order of their claims, not the estate of the liquidated insurer

granted. The Supreme Court vacated the Court of Appeals' determination that the

Cases in Which the NAIC Filed as Amicus Curiae

D M . P' . D L , No. - , (*C . ') (NAIC A , ')* In its edition, the *J I R* reported on *D M . P' . D L* , F.Supp. d (N.D. Tex. Sept. ,) where the district court held in favor of Plaintiff and that the Department of Labor ("DOL") led an appeal in the Fifth Circuit. The NAIC submitted an amicus brief to the Fifth Circuit Court of Appeals on April , , supporting the United States Department of Labor in seeking a reversal of the district court's order. At issue is whether the health plan sponsored and administered by Data Marketing Partnership ("DMP") and offered to its limited partners is an "employee bene t plan" within the meaning of ERISA or whether state insurance laws govern the plan. DMP states that its business consists of limited partners installing a track app of their smart phones so that they can sell the data to third-party marketing rms. DMP calls its limited partners "working owners" of the company, arguing that it is providing a single-employer health plan pursuant to ERISA. The DOL issued an advisory opinion stating that, based on the presented facts, DMP was not an employer and the "limited partners" were not employees or "working owners." The NAIC led a brief agreeing with the DOL that DMP's health plan appears to be a scheme to avid regulatory oversight of the commercial sale of insurance outside the context of employment-based relationships. The brief explained that ever since ERISA was enacted, there have been a number of such schemes to evade state insurance law, putting consumers at serious risk of losing health coverage to insurer insolvency.

G . C C . C ., No. : -cv- (N.D. Ill.) *(NAIC S , ')* The NAIC submitted an amicus brief on September , , at the suggestion of the Seventh Circuit Court of Appeals, to the United States District Court for the Northern District of Illinois to "educate generalist federal courts about the broader implications of choice-of law rules as applied to group insurance policies." *G . C ; C . C .*, F. d , (th Cir.). The NAIC's brief supports CNA's position that the Washington Of ce of the Insurance Commissioner (OIC) properly exercised its authority in approving the rates for the CNA certi cate of insurance issued to plaintiff Carlton Gunn. Gunn argues that because the policy was issued to his employer in Washington, D.C., it was the D.C. Department of Insurance, Securities and Banking's approved rates that applied to his certi cate. Gunn is a resident of Washington state and his certi cate was issued to him in Washington. Washington law contains several provisions providing the OIC with authority to approve rates for certi cates issued to residents in the state. The NAIC takes the position that the led-rate doctrine recognizes the authority of the Washington OIC to approve premium rates that are actuarially justi ed pursuant to legal requirements, making a choice of law analysis inapplicable.