Abstracts of Significant Cases Bearing on the Regulation of Insurance

Oli ea M ers[1]

United States Court of Appeals

Oklahoma

Pharm. Care Mgmt. Ass'n v. Mulready, 78 F.4th 1183 (10th Cir. Aug. 15, 2023)

Pharmace ical Care Managemen Associa ion (PCMA) challenged an Oklahoma la reg la ing pharmac bene managers (PBMs) arg ing ha 'es ablish[ed] minim m and niform access o a pro ider and s andards and prohibi ions on res ric ions of a pa ien 's righ o choose a pharmac pro ider.' *Id.* a . PCMA arg ed ha he Emplo ee Re iremen Income Sec ri Ac of (ERISA) and Medicare Par D

State Court

California

*Myers v. State Bd. of Equalization, No. B307981, 2023 WL 3050778, at *1 (Cal. Ct. App. Apr. 24, 2023)*

M ers (_Appellan) led s i o compel he California S a e Board of Eq ali a ion, he Ins rance Commissioner of he S a e of California, and he Con roller of he S a e of California (_Responden s) o collec he gross premi m a imposed b California la from cer ain heal h care ser ice plans, hich are reg la ed b he Depar men of Managed Heal h Care nder a differen reg la or scheme han ins rers. In , he California Co r of Appeals adop ed a s andard for deciding he her heal h care ser ice plans are ins rers for a p rposes. The s andard req ires balancing he indemni aspec s of he b siness agains he direc ser ice aspec s in rela ion o de ermining he her indemni cons i es a signi can nancial propor ion of he b siness. Appellan con ended ha he rial co r incorrec l nders ood he meaning of indemni nder he s andard and ha i sho ld ha e applied a differen es o

The Washing on S preme Co r held ha NY Life's claim regarding lack of ins rable in eres as no barred beca se Washing on la req ires an indi id al proc ring a life ins rance polic on ano her o ha e an ins rable in eres in he ins red a he incep ion of he ins rance con rac . *Id.* a . The co r f r her held ha ins rance con rac s lacking he req isi e ins rable in eres are oid as he are agains p blic polic . *Id.* The co r held ha an ins rance polic ma be con es ed af er he o- ear period if here is e idence ha someone o her han he ins red signed he applica ion, sing he name of he ins red, i ho legal a hori o do so and i ho he ins red's consen . *Id.* a - . The co r f r her held ha fra d len s a emen s of he ins red are s bjec o he incon es abili cla se and are no gro nds o se he con rac aside af er he s a or period, b co r s ha e held ha he incon es abili cla se does no appl o impos er fra d and Washing on la has codi ed he impos er fra d r le. *Id.* a . The co r s a ed ha NY Life can con es he polic on he gro nd ha Loren o did no consen o en er in o a con rac in ri ing or make he applica ion himself. *Id.* a . Regarding he incapaci q es ion, he co r held ha he polic canno

Cases in Which the NAIC Filed as *Amicus Curiae*

Delaware Dep't of Ins. v. United States, 144 S.Ct. 422 (2023)

The Uni ed S a es S preme Co r denied a pe i ion for ri of cer iorari o re ie he decision of he Uni ed S a es Co r of Appeals for he Third Circ i in he case of Uni ed S a es of America . S a e of Dela are Depar men of Ins rance, F. h WL (rd Cir.). The NAIC led an amic s brief in s ppor of a pe i ion for ri of cer iorari led b Dela are Ins rance Commissioner Trinidad Na arro. The Dela are Depar men of Ins rance (Depar men) ref sed o pro ide doc men s and es imon responsi e o an In ernal Re en e Ser ice (IRS) s mmons regarding he licens re of micro-cap i e ins rance companies formed nder In ernal Re en e Code (b). Compliance i h he s mmons o ld ha e con ra ened Sec ion of he Dela are Ins rance Code hich pro ec s he con den iali of s ch ma erials nless he recipien agrees o keep he informa ion con den ial. The Third Circ i Co r of Appeals fo nd ha he Depar men did no mee he es for re erse-preemp ion nder of he McCarran-Ferg son Ac and ha he challenged cond c did no in ol e he b siness of ins rance. O her co r s ha e in erpre ed McCarran-Ferg son o req ire hree elemen s before re erse preemp ion is appropria e: ( ) he her he s a e la is enac ed for he p rpose of reg la ing he b siness of ins rance; ( ) he her he federal la does no speci call rela e o he b siness of ins rance; and ( ) he her he federal la o ld in alida e, impair, or s persede he s a e la . Ho e er, he Third Circ i ins ead imposed a hreshold q es ion ha co r s m s rs assess before anal ing he o her re erse-preemp ion req iremen s: i.e., he her he challenged cond c broadl cons i es he b siness of ins rance in he rs place. The S preme Co r lef in place he Third Circ i 's holding ha he cond c a iss e (i.e., he ref sal b he Depar men o prod ce s mmoned doc men s i ho he IRS rs signing a con den iali agreemen) did no cons i e he b siness of ins rance i hin he meaning of McCarran-Ferg son beca se he cond c did no rela e o he rela ionship be een ins rer and ins red, he pe of polic iss ed, or i s reliabili , in erpre a ion, and enforcemen .