

Ninth Circuit Finds ERISA Complaint Sufficiently Alleges Insurer had Waived Anti-Assignment Defense

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In *Cal. Spine & Neurosurgery Inst. v. Blue Cross of Cal.*, 2020 U.S. App. LEXIS 20533 (9th Cir. June 20, 2020), the Ninth Circuit held that a surgical provider's complaint sufficiently alleged that Blue Cross of California ("Blue Cross") had waived its post-denial anti-assignment defense under an ERISA plan.

In so ruling, the court reversed the district court's dismissal with prejudice of the surgical provider's complaint. The Ninth Circuit also reversed, with prejudice, the district court's dismissal of the provider's federal equitable estoppel claim under ERISA, remanding the case to the district court for its consideration of all seven factors required to state a claim for equitable estoppel.

In this case, California Spine and Neurosurgery Institute, doing business as San Jose Neurospine ("California Spine"), provided surgical services to a member of an ERISA plan administered by Blue Cross. Prior to the surgery, the patient assigned his ERISA rights to California Spine, which later submitted a reimbursement claim to Blue Cross indicating it was acting as the member's assignee. California Spine alleged Blue Cross never told California Spine before it submitted the claim that Blue Cross intended to rely upon an anti-assignment clause as a basis to bar payment. California Spine further alleged it would not have performed the surgery had it been so informed. After submission of the claim, Blue Cross denied \$88,906.62 of the total \$93,000.00 claim on the basis it exceeded the maximum allowable amount. Significantly, the denial did not raise the anti-assignment clause as a defense, which was asserted for the first time during litigation.

In its opinion dismissing the case with prejudice, the district court acknowledged an ERISA plan administrator must explain the specific reasons for a denial of a claim, but held that the anti-assignment defense was a litigation defense and not a substantive basis for claim denial, such that it need not be raised during the claim denial. On appeal, the Ninth Circuit reversed, holding California Spine sufficiently alleged Blue Cross waived its ability to rely on the anti-assignment provision. More specifically, the Ninth Circuit relied on *Spinedex Physical Therapy USA, Inc., v. United Healthcare of Ariz., Inc.*, which held an anti-assignment defense was not waived where

the administrator was aware, or should have been aware, during the administrative process that plaintiff was acting as the patient's assignee.

The Ninth Circuit also reversed and remanded the portion of the district court's order, dismissing with prejudice, California Spine's equitable estoppel claim. In its opinion, the district court identified seven factors required to maintain a federal equitable estoppel claim in the ERISA context, but only analyzed three of those factors. As put forward in *Gabriel v. Alaska Elec. Pension Fund*, the seven factors required to maintain a federal equitable estoppel claim in the ERISA context are:

1. the party to be estopped must know the facts;
2. he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it so intended;
3. the latter must be ignorant of the true facts;
4. he must rely on the former's conduct to his injury;
5. extraordinary circumstances are alleged;
6. the provisions of the plan at issue were ambiguous such that reasonable persons could disagree as to their meaning or effect; and
7. that the representations made about the plan were an interpretation of the plan, not an amendment or modification of the plan.

The Ninth Circuit reversed and remanded the case to the district court for its consideration of all seven factors.

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