

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 COVENTRY HEALTH CARE OF :

4 MISSOURI, INC., FKA GROUP :

5 HEALTH PLAN, INC., :

6 Petitioner : No. 16-149

7 v. :

8 JODIE NEVILS, :

9 Respondent. :

10 - - - - - x

11 Washington, D.C.

12 Wednesday, March 1, 2017

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14 The above-entitled matter came on for oral
15 argument before the Supreme Court of the United States
16 at 10:09 a.m.

17 APPEARANCES:

18 MIGUEL A. ESTRADA, ESQ., Washington, D.C.; on behalf
19 of the Petitioner.

20 ZACHARY D. TRIPP, ESQ., Assistant to the Solicitor
21 General, Department of Justice, Washington, D.C.;;
22 for United States, as amicus curiae, in support
23 of the Petitioner.

24 MATTHEW W.H. WESSLER, ESQ., Washington, D.C.; on behalf
25 of the Respondent.

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P R O C E E D I N G S

(10:09 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument this morning in Case 16-149, Coventry Health Care Missouri v. Nevils.

Mr. Estrada.

ORAL ARGUMENT OF MIGUEL A. ESTRADA

ON BEHALF OF THE PETITIONER

MR. ESTRADA: Thank you, Mr. Chief Justice, and may it please the Court:

The issue in this case is whether FEHBA preempts State laws that forbid subrogation by insurance carriers. The Missouri Supreme Court upheld the State rule, but we believe that is wrong for at least three reasons.

Number one, antesubrogation laws relate to benefits and coverage, as this Court concluded in FMC v. Holliday, and at the very least, they relate to payments with respect to benefits.

Number two, if there's any ambiguity on this point, OPM's notice-and-comment regulation answers a question in favor of preemption.

And number three, although the majority of the Supreme Court of Missouri thought otherwise, we believe there's no constitutional infirmity in

1 Section 8902(m) (1) under the Supremacy Clause.

2 If I could turn to my first point, it seems
3 to us that the antisubrogation rule in this case is
4 preempted for basically the same reasons this Court
5 considered in FMC in concluding that the same rule was
6 preempted under ERISA. That is to say that it
7 effectively requires plan administrators to calculate
8 benefits on the basis of different liability conditions
9 that vary from State to State; that very importantly, it
10 undermines the statute's goal of uniformity; and third,
11 that it could encourage plan sponsors, in this case, the
12 Federal government, to reduce the scope of coverage.

13 In addition to those reasons, this statute
14 gives you an additional reason to find that it is
15 preempted, and that is that it also preempts those rules
16 that relate to payments with respect to benefits.

17 It is quite clear to us that the subrogation
18 and reimbursement claims that are at issue in these
19 rules quite plainly refer to and relate to payments with
20 respect to benefits; and therefore, the Supreme Court of
21 Missouri was wrong in overlooking that part of the
22 statute and also wrong in overlooking your decision in
23 FMC v. Holliday.

24 JUSTICE GINSBURG: Is there any -- any room
25 at all for State regulation of carriers who have these

1 contracts with OPM?

2 MR. ESTRADA: Well, to be sure, the -- the
3 statute, if you focus on the last clause -- now, the
4 statute appears in page 2 of the blue brief -- if you
5 focus on the last clause, the statute only reaches those
6 State laws that, quote, "relate to health insurance or
7 plans." And there are any number of subjects that may
8 not be reached by these laws, or by other laws, and also
9 subjects that are not related to benefits, coverage or
10 payments with respect to benefits.

11 Congress dealt separately in Section -- in
12 Section 8909(f) with the subject of taxation in the
13 context of these plans and generally provided that
14 carriers may be subject to generally-applicable laws
15 that are applicable to all businesses under profits and
16 -- and the like, but that States, you know, may not tax,
17 you know, the benefits and the payments.

18 And so Congress has, in fact, crafted a
19 limited preemption provision that singles out those laws
20 that are most likely to apply to the insurance plans at
21 issue, and then only say that the scope of the
22 preemption will be defined by particular terms of the
23 contract. And so in our view, in some ways, the reach
24 of this law is somewhat more limited than the -- that of
25 the ERISA statute because, although your "relate"

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