DRAFT 9-29-21

**Rutledge v. Pharmaceutical Care Management Assoc., 141 S.Ct. 474 (2020)**

In Rutledge v. Pharmaceutical Care Management Assoc., the Supreme Court considered whether ERISA preempted a state law that regulates the price at which pharmacy benefit managers reimburse for the cost of drugs covered by prescription drug plans? The Court decided in December 2020 that an Arkansas law regulating pharmaceutical costs was not preempted by ERISA.

The Arkansas law regulated Pharmacy Benefit Managers (PBMs). PBMs function as intermediaries between prescription-drug plans and pharmacies. When someone goes to fill a prescription, the pharmacy checks with the PBM to determine the person’s coverage and copayment information. The PBM then reimburses the pharmacy for the prescription, minus the amount of the copayment. The prescription drug plan then reimburses the PBM.

The issue is that the amount a PBM “reimburses” a pharmacy is not tied to how much the pharmacy paid the wholesaler. Instead, the PBM sets the reimbursement rates they pay according to a list specifying the maximum allowable cost (MAC) for each drug – called a MAC list.

Then, the PBM has another contract with the prescription-drug plan, where the plan reimburses the PBM. PBMs coordinate their MAC lists with these contracts so they make a profit. PBMs profits come from drug sales and often to the detriment of smaller pharmacies.

The Arkansas law helped some of the smaller, rural pharmacies increase their reimbursement levels. The law required that the MAC lists created by PBMs reflected actual costs pharmacies were paying the wholesaler to buy the drugs. It also allowed pharmacies to appeal MAC reimbursement prices below the pharmacies’ reimbursement costs and allowed pharmacies to refuse to fill prescriptions with inadequate reimbursement rates.

The Court referred to its opinions in *Travelers, De Buono* and *Dillingham*, holding that there was no impermissible “connection with” ERISA. ERISA does not preempt state rate regulations that merely increase costs or alter incentives for ERISA plans without forcing plans to adopt any particular scheme of substantive coverage. In addition, the Court said there was no “reference to” ERISA because the law didn’t act immediately or exclusively on ERISA plans and ERISA plans are not essential to the law’s operation.