This Week's Feature

Sixth Circuit Joins Others Holding No Pecuniary Loss Needed for Standing to Sue for Benefits Under ERISA

By Jeffrey M. Brenner

While Article III standing has always been regarded as a prerequisite for a benefits claim under the Employee Retirement Income Security Act (ERISA), what has not always been clear is whether the "case or controversy" requirement for Article III standing requires the litigant to have suffered pecuniary loss.

In *Springer v. Cleveland Clinic Employee Health Plan Total Care*, 900 F.3d 284 (6th Cir. 2018), the Sixth Circuit joined the Fifth, Ninth, and Eleventh Circuits in holding "that a plaintiff . . . does not need to suffer financial loss" to satisfy Article III standing for a 502(a)(1)(B) claim under ERISA. *Id.* at 287.

There, Springer, a physician, had enrolled his family in the Cleveland Clinic's employee benefit plan. *Id.* at 286. His coverage began on July 1, but it required approximately 15 business days to process his enrollment paperwork. *Id.* The plan provided that claims rendered during the enrollment period "may be denied" but would later be adjusted once his benefit paperwork was processed. *Id.*

Six days after coverage began (July 7), Springer had his 14-month-old son transported from a Utah hospital to the Cleveland Clinic by Angel Jet's air ambulance service. Id. Springer's son had a lengthy medical treatment history since birth; he had multiple congenital abnormalities, including omphalocele (protrusion of abdominal organs from the navel) and pulmonary hypoplasia (underdeveloped lungs), and he required a mechanical ventilator to breathe. *Id.*

The son's physician drafted a letter of necessity for the air ambulance service, explaining that Springer's son could not be safely transported by any other means because of the distance and his health conditions. *Id.* Prior to the flight, Angel Jet sought Springer's coverage information from the plan administrator, but the administrator could not confirm that Springer and his son were members of the plan and did not precertify the air ambulance service. *Id.* Springer's son's transport had also not been declared a medical emergency.

Angel Jet proceeded with the transportation and submitted a bill to the plan administrator for $340,100. *Id.* The plan administrator denied the claim a few days later for failure to obtain precertification. *Id.* Angel Jet appealed the denial and that denial was affirmed, but a check for $34,451.75 was later issued to Angel Jet as partial compensation for its services. *Id.* Angel Jet brought suit under ERISA as an alleged assignee for the remainder of its bill. *Id.*

The district court dismissed the suit, finding that Springer had not properly assigned his rights under the plan to Angel Jet. Springer brought his own claim as a plan participant under Section 502(a)(1)(B). The district court affirmed the plan's denial of benefits, finding in part that Springer did not suffer an injury to have Article III standing because he received the air ambulance service and was not balance billed for any of the expenses. *Id.* at 287. Springer appealed to the Sixth Circuit.

Article III standing requires a "case or controversy" at all stages of litigation. The Supreme Court has held that the case or controversy requirement is of paramount importance to the separation of powers. *See generally Daimler-Chrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006). Article III standing requires that a plaintiff demonstrate three facts as evidence of the existence of a case or controversy:

> (1) [he or she] has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Friends of the Earth, Inc. v. Laidlaw Envt'l. Servs. (TOC), Inc., 528 U.S. 167, 180–81 (2000).

The Sixth Circuit held that Springer did satisfy Article III standing "because he was denied health benefits he was allegedly owed under the plan," and "[l]ike any private contract claim, his injury does not depend on allegation of financial loss." *Springer*, 900 F.3d at 287. More specifically, "Springer purchased a health plan that said it would 'pay 100 percent for transportation—including… air ambulance,'

but… only paid about ten percent of his air ambulance expense." *Id.*

The Sixth Circuit noted that "[e]very circuit court to consider this issue agrees that a plaintiff in Springer's shoes does not need to suffer financial loss" to have Article III standing. *Id.* (citing *North Cypress Med. Ctr., Operating Co., Ltd. v. Cigna Healthcare*, 781 F.3d 182, 192–94 (5th Cir. 2015); *Spinedex Physical Therapy USA Inc. v. United Healthcare of Arizona, Inc.*, 770 F.3d 1282, 1289–91 (9th Cir. 2014); *HCA Health Servs. of Georgia, Inc. v. Employers Health Ins. Co.*, 240 F.3d 982, 991 (11th Cir. 2001), *overruled on other grounds by Doyle v. Liberty Life Assur. Co. of Boston*, 542 F.3d 1352 (11th Cir. 2008). Rather, "[t]he Fifth, Ninth, and Eleventh Circuits have each held that the denial of plan benefits is a concrete injury for Article III standing even when patients were not directly billed for their medical services." *Id.*

Although the Sixth Circuit held that Springer's claim satisfied Article III standing, even without direct pecuniary loss, the court ultimately affirmed the trial court's dismissal of Springer's claim because "Springer [did] not demonstrate[] that he was entitled to reimbursement for the air ambulance service [and e]ven applying de novo review, the plain language of the plan precludes his claim [because t]he plan unambiguously requires precertification as a condition of coverage." *Id.* at 289. More specifically the plan language stated that "[i]f precertification is required and *NOT* obtained, EHP Total Care is not obligated to reimburse for services even if it is a covered benefit." *Id.* (emphasis in original).

Thus, because "Springer did not show the transportation was an emergency or obtain the precertification required for a nonemergency, he was not entitled to reimbursement under the plan." *Id.* at 290.

While this holding is certainly a boon to the plaintiffs' bar, Springer reminds us that while Article III standing may be the floor for a benefits claim, it is by no means the ceiling. Claimants must still satisfy all requirements of plan language, and the failure to do so may prove fatal to their claims, regardless of Article III standing.

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