



U.S. Supreme Court will Review Rutledge v. PCMA

Background:

- The U.S. Supreme Court will review a case in which the U.S. Court of Appeals for the Eighth Circuit ruled certain PBM regulations enacted by the State of Arkansas were preempted by ERISA, meaning the state did not have the authority to regulate employer-or union-sponsored health plans.
- The Eighth Circuit determined Arkansas's laws were impermissibly related to and connected with employee benefit plans, also known as ERISA plans.
- Pursuant to an invitation from the Supreme Court, the United States Solicitor General filed an *amicus curiae* brief on behalf of the United States arguing that the Eighth Circuit's ruling is "incorrect" and "contrary to [the Supreme] Court's precedent and the decisions of other courts of appeals."

Findings by the Federal Government:

- In the brief, the federal government takes the position that "the Court of Appeals erred in holding that ERISA preempts Arkansas's regulation of . . . pharmacy benefit managers."
 - They argue that Arkansas's PBM regulation does not make an impermissible reference to ERISA plans.
 - **The government notes that the PBM regulation does not reference ERISA plans because it "imposes obligations on PBMs, not ERISA plans."**
 - They further argue that PBM regulations do not contain a reference to ERISA plans simply because the plans to which PBMs provide services may include ERISA plans. A contrary finding "would give ERISA's preemption provision nearly 'limitless application,' far beyond what any 'sensible person could have intended.'"
 - The federal government argues that Arkansas's PBM regulation does not have an impermissible connection with ERISA plans.
 - **The government notes that Arkansas's law "regulates only the relationship between PBMs and pharmacies. It does not regulate the [ERISA] plans themselves or their relationships with PBMs, pharmacies, or plan participants."**
 - There is no impermissible connection to ERISA plans because the PBM regulation "leaves plan administrators right where they would be in any case, with the responsibility to decide whether it would be worthwhile to contract with a PBM for services."
 - The regulation is not connected to ERISA plans because "the Arkansas law here does not require plans to do anything."

Conclusion:

- The Supreme Court will review the Eighth Circuit's ruling and potentially provide clarity on the extent to which states can regulate PBMs that serve ERISA plans.
- **THE FEDERAL GOVERNMENT HAS TAKEN THE POSITION THAT FEDERAL LAW (I.E., ERISA) DOES NOT PREEMPT STATES FROM REGULATING PBMs, INCLUDING PBMs THAT SERVE ERISA PLANS!**