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Steve Lash (https://thedailyrecord.com/author/stevelash/) // **Legal Affairs Writer** // August 16, 2013 // **5 minute Read**
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former CareFirst executive lost a \$4 million battle on Friday when Maryland's top court unanimously held that he was entitled to just \$2.7 million of the \$6.7 million termination package his employment contract had provided.

The Court of Appeals held that Leon Kaplan's golden parachute included compensation that was not "for work actually performed for the benefit of the corporation," violating the requirements of Maryland insurance law governing executive pay at nonprofit health service plans.

A lower court had ruled that the state law was trumped by the federal Employee Retirement Income Security Act and that Kaplan was entitled to the full contractual amount, which included CareFirst's Supplemental Executive Retirement Plan. The SERP provided money in excess of CareFirst's general retirement plan.

The Court of Appeals, however, found that ERISA did not pre-empt state law because the regulation of executive compensation at nonprofits is a traditional state function.

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Section 14-139(c) of the Insurance Article "affects a domain long subject to state regulation," Judge Robert N. McDonald wrote for the high court. "Its restriction on payments from the company's general funds with respect to the CareFirst SERP is an incidental result of state regulation of nonprofit health service plans and the appropriate use of their public and charitable assets — regulation that inevitably encompasses executive compensation at such entities."

The court reinstated the Maryland Insurance Commissioner's approval of \$2.7 million for Kaplan.

Maryland Insurance Commissioner Therese M. Goldsmith said in a statement that she is "pleased" with the court's decision and its interpretation of the state law.

"Going forward, it will be clear that Section 14-139(c), which regulates executive compensation at nonprofit health service plans by requiring that compensation be 'fair and reasonable' and 'for work actually performed for the benefit of the corporation,' is not preempted by the federal ERISA statute," Goldsmith added.

Caring Mills-based CareFirst, through its spokeswoman Maya Newman, declined to comment on the decision.

Kaplan did not return an email message seeking comment. His attorney, Ward B. Coe III, did not return telephone or email messages seeking comment. Coe is with Gallagher Evelius & Jones LLP in Baltimore.

Kaplan served as CareFirst's executive vice president of operations from December 2000 until his termination in April 2009.

Under the terms of his employment contract, Kaplan was to receive his base salary for two years after his dismissal and additional funds in excess of CareFirst's standard retirement plan, bringing the compensation package to \$6.7 million. The compensation committee, however, concluded that Kaplan was not legally entitled to the excess amount and settled on a \$2.7 million package.

Then-Maryland Insurance Commissioner Ralph Tyler agreed with CareFirst in February 2009, citing Section 14-139(c). That decision was upheld in September 2009 after an administrative hearing.

But the Baltimore County Circuit Court in July 2011 said Kaplan was entitled to the full \$6.7 million, saying the state law limiting compensation violated ERISA.

The insurance commissioner sought review by the Court of Special Appeals, and Kaplan filed a cross-appeal. The high court, on its own motion, took the case before it was heard by the intermediate court.

Different result

Kaplan might have former CareFirst Chief Executive William L. Jews to blame for his lost


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In November 2009, after Kaplan signed his 2000 employment contract, CareFirst's board fired Jews, who was to receive \$18 million in post-termination benefits.

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But a public outcry ensued and Tyler reviewed the package, concluding in June 2008 that it violated the statutory requirement that compensation be "fair and reasonable" and "for work actually performed for the benefit of the corporation."

The commissioner slashed the compensation in half to \$9 million.

CareFirst's board subsequently revised its executive compensation guidelines to comply with the law in September 2008 – seven months before Kaplan's termination. The guidelines require the board to make "a separate independent judgment whether the compensation ... constitutes fair and reasonable compensation ... for work actually performed for the benefit of CareFirst."

Jews, however, ultimately fared better than Kaplan.

A Baltimore County Circuit Court judge restored Jews' \$18 million payment in full in 2009 after finding no formula or methodology to support Tyler's reduction. The Court of Special Appeals upheld the ruling in January 2011, faulting the lack of "substantial evidence" to support the 50 percent reduction.

The Court of Appeals declined to hear the Maryland Insurance Commissioner's appeal in May 2011.

WHAT THE COURT HELD

Case:

Maryland Insurance Commissioner v. Leon Kaplan, CA No. 12 Sept. Term 2012. Reported. Opinion by McDonald, J. Argued Oct. 9, 2012. Filed Aug. 16, 2013.

Issue:

Does the federal Employee Retirement Income Security Act preempt Maryland Insurance Article 14-139, which governs executive compensation at nonprofit health service plans?


Holding:

No; the state law controls because the regulation of executive compensation at nonprofits is a traditional state function.


Counsel:

J. Van Lear Dorsey for petitioner; Ward B. Coe III for respondent.

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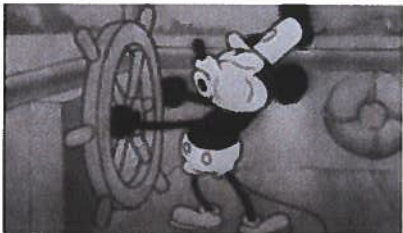
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