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Benefits Co. Can't Escape J&J's Suit Over Patient Drug Fund

By **Emmy Freedman**

Law360 (January 27, 2023, 7:04 PM EST) -- A New Jersey federal judge said prescription benefits middleman SaveOnSP LLC must face a Johnson & Johnson unit's lawsuit alleging it artificially inflated co-pays, saying federal benefits law does not preempt J&J's claims.

On Wednesday, U.S. District Judge John Michael Vazquez rejected SaveOnSP's bid to toss Johnson & Johnson Health Care Systems Inc.'s lawsuit accusing it of swiping tens of millions of dollars from J&J's financial support program, CarePath, which helps its insured patients afford needed medications. J&J brought a claim for deceptive trade practices under the New York General Business Law, and a claim for tortious interference with its patient contracts.

Judge Vazquez was not persuaded by SaveOnSP's argument that J&J's claims are barred by the Employee Retirement Income Security Act because J&J wants the court to stop private benefits plans from setting their own terms and instead coerce them into adopting its preferred benefits design.

"Defendant asserts that plaintiff's claims have a connection to an ERISA plan," Judge Vazquez said. "The court disagrees. Granting relief to plaintiff on either claim would not require plan administrators to make any plan changes."

Judge Vazquez said J&J's lawsuit doesn't undermine ERISA's objectives, citing the U.S. Supreme Court's 2020 decision in Rutledge v. Pharmaceutical Care Management Association, which stated that "not every state law that affects an ERISA plan or causes some disuniformity in plan administration has an impermissible connection with an ERISA plan."

SaveOnSP's argument against J&J's GBL claim also failed, Judge Vazquez said. J&J plausibly pled that SaveOnSP deceived participants enrolled in CarePath by failing to tell patients that they would be violating J&J's terms and conditions if they elected to participate in SaveOnSP's services.

J&J's tortious interference claim can also proceed because the patients SaveOnSP allegedly siphoned from CarePath were already enrolled in CarePath and therefore bound to its terms and conditions, the order said. J&J claimed SaveOn knew that patients agreed not to participate in other offers each time they utilized the CarePath copay assistance program. Therefore, J&J adequately alleged that it already had a contractual relationship with patients when SaveOnSP interfered, Judge Vazquez said.

J&J filed its complaint in May, alleging that SaveOnSP exploited CarePath by changing the designation of certain drugs from "essential health benefits" to "non-essential health benefits" under the Affordable

Care Act, with no regard for patients' actual medical needs.

That way, SaveOnSP got around the ACA's annual out-of-pocket maximum, which limits how much money patients with private insurance can be required to pay for their medical care every year, J&J said. SaveOnSP's partners can then charge patients inflated copay costs, even when the patient has already met the out-of-pocket maximum, the complaint added.

In return, the health plan payers reward SaveOnSP with a 25% commission on their "savings," the complaint stated.

"We welcome the court's ruling, and will now proceed swiftly through the disclosure phase to lay bare SaveOn's scheme to seize for its own benefit the funds that J&J makes available to help patients afford their medications," Adeel A. Mangi, who represents J&J, told Law360.

A representative of SaveOnSP did not immediately respond to a request for comment Friday.

J&J is represented by Jeffrey J. Greenbaum and Katherine M. Lieb of Sills Cummis & Gross PC and Adeel A. Mangi, Harry Sandick and George LoBiondo of Patterson Belknap Webb & Tyler LLP.

SaveOnSP is represented by Eric Evans Wohlforth Jr. and Julia E. Palermo of Gibbons PC.

The suit is Johnson & Johnson Health Care Systems Inc. v. SaveOnSP LLC, case number 2:22-cv-02632, in the U.S. District Court for the District of New Jersey.

--Additional reporting by Lauren Berg. Editing by Abbie Sarfo.
