

## **ERISA preemption update - Seventh Circuit holds that ERISA does not preempt Illinois slayer statute**

Article By:

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In a sad and tragic case, Anka Miscevic killed her husband while he was sleeping, irrationally fearing that he was plotting to murder her and their 13-year-old child. After a criminal trial, the court found her guilty of first degree murder, but also found that she was insane at the time of the offense.

The deceased husband had worked as a union laborer and had earned a vested pension benefit. The plan document specified that if a participant died before benefit payments began, the participant's spouse would be entitled to a surviving spouse benefit, payable as a monthly annuity for rest of the spouse's life. Where the participant does not have a spouse, the plan states that the participant's minor child shall receive a monthly benefit until he or she turns 21.

Yet the Illinois Probate Code contains what is commonly called a "slayer statute," providing that a person who intentionally kills another shall not receive any "property, benefit, or other interest" due to that person's death. [755 Ill. Comp. Stat. 5/2-6](#). The pension fund filed an interpleader action in federal court seeking a declaration of who was entitled to the survivorship benefit: the wife under the terms of the plan, or, giving effect to the slayer statute, the child.

Ordinarily, ERISA preempts state laws that purport to alter the terms of ERISA plans. The policy behind preemption is to promote fidelity to plan language and to provide for nationally uniform rules applicable to plan administration. In this case, Anka asserted that applying the slayer statute here would alter the beneficiary provisions in the plan and would potentially create special plan administration rules applicable only in Illinois. Accordingly, Anka argued that statute should be preempted. The child's counsel argued that slayer statutes were well-established aspects of state law that Congress did not intend to be preempted.

The trial court ruled in favor of the child, holding that ERISA did not preempt the slayer statute and the U.S. Court of Appeals for the Seventh Circuit affirmed. In its opinion, the court of appeals noted that the U.S. Supreme Court had previously discussed, in dicta, whether ERISA would preempt state slayer statutes. Specifically, the Supreme Court stated that such statutes had a "long historical pedigree predating ERISA" and were in effect in almost every state, and that preemption was therefore "at least debatable." [Egelhoff v. Egelhoff](#), 532 U.S. 141, 152 (2001).

Noting that it was the first federal court of appeals to address this issue, the Seventh Circuit followed

the suggestion of the Supreme Court, holding that the slayer statute was not preempted. The court relied on the fact that slayer statutes are typically found in state family law codes, a traditional area of exclusive state regulation, creating a strong presumption against preemption. The court went on to hold that Anka had not overcome the presumption, because of the longstanding nature of slayer statutes and because “Congress could not have intended ERISA to allow one spouse to recover benefits after intentionally killing the other spouse.”

The case is [Laborers' Pension Fund v. Miscevic](#), 2018 WL 578775 (7th Cir. January 29, 2018).

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