State of New York
Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Tuesday, February 11, 2020

No. 12 Plavin v Group Health Incorporated

Steven Plavin brought this federal class action on behalf of New York City employees and retirees against Group Health Incorporated (GHI) in U.S. District Court for the Middle District of Pennsylvania in 2017, alleging that GHI made misleading statements about the costs and scope of the out-of-network coverage and other benefits provided by its City-sponsored health insurance plan in violation of New York's consumer protection statutes, sections 349 and 350 of the General Business Law (GBL). The GHI plan was one of 11 health insurance plans the City made available to its workforce pursuant to collective bargaining agreements, and the City negotiated its contract with GHI with input from municipal unions. Plavin, a retired NYPD officer, claimed GHI made misrepresentations in two summaries it prepared to describe the coverage and benefits offered by its plan. GHI posted one of the summaries on its website and sent the other to the City, which distributed it along with summaries of the 10 competing insurance plans to its employees and retirees to provide guidance as they chose among them.

GHI moved to dismiss the suit on the ground, among others, that Plavin failed to adequately allege that its conduct was "consumer-oriented" as required by GBL §§ 349 and 350. The District Court granted the motion to dismiss, saying Plavin failed to state a claim that GHI engaged in consumer-oriented conduct. "Here, the alleged deception arises out of a private contract negotiated between" GHI and the City, it said. "Plavin cites the sheer number of employees affected as support [for] his argument that the conduct is 'consumer-oriented'.... But the fact that a large class of members is affected does not automatically transform the plan into something that has 'a broader impact on consumers at large'.... Plavin was only able to receive the benefits of [GHI's] plan by virtue of being an employee of the City of New York, which bargained with [GHI] on behalf of its employees – and only its employees – on the terms of employee benefit plans.... [H]e was a third-party beneficiary of a contract between two sophisticated institutions in this case, not a mere consumer of the public."

In asking this Court to resolve the key issue, the U.S. Court of Appeals for the Third Circuit said, "'No controlling [New York] precedent' exists on the question of whether an insurer's conduct is consumer-oriented for purposes of the GBL where hundreds of thousands of City employees and retirees ... have been materially misled by the insurer's summary plan documents." In a certified question, the Third Circuit asks, "Where a contract of insurance is negotiated by sophisticated parties such as the City of New York and an insurance company, and where hundreds of thousands of City employees and retirees are third-party beneficiaries of that contract, and where the insurance company's policy created pursuant to the contract is one of several health insurance policies from which employees and retirees can select, has the insurance company engaged in 'consumer-oriented conduct' under the GBL when: (1) The insurance company drafts summary plan information that allegedly contains materially misleading misrepresentations and/or omissions about the coverage and benefits of the insurance policy and sends these summary materials to the City, and the City does not check or edit these materials before sending them on to the City employees and retirees; OR (2) The insurance company directs City employees and retirees to information on the insurance company's website that allegedly contains materially misleading misrepresentations and/or omissions about the coverage and benefits of the insurance policy?"

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For respondent GHI: John Gleeson, Manhattan (212) 909-6000

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To be argued Tuesday, February 11, 2020

No. 13 Matter of Vega (Postmates Inc. – Commissioner of Labor)

Postmates Inc. operates an on-line service that enables customers to order meals from local restaurants or merchandise from stores and have their orders delivered by courier, usually within about an hour. Louis A. Vega worked as a Postmates courier for one week in 2015, until Postmates terminated its relationship with him based on customer complaints. Vega applied for unemployment benefits and the New York State Commissioner of Labor determined he was eligible, finding that Postmates exercised sufficient control over his work to create an employer-employee relationship. Postmates appealed and an administrative law judge (ALJ) reversed the decision, holding that Vega had been an independent contractor. On the Commissioner's appeal the Unemployment Insurance Appeal Board reversed the ALJ's decision, holding that Vega had been an employee and that Postmates was liable for additional unemployment insurance contributions on remuneration paid to him as well as other Postmates couriers.

The Appellate Division, Third Department reversed on a 3-2 vote, saying the Appeal Board's finding of an employment relationship was not supported by substantial evidence. The majority said "there is no application and no interview" for couriers to begin working for Postmates, they "are not thereafter required to report to any supervisor, and they unilaterally retain the unfettered discretion as to whether to ever log on to Postmates' platform and actually work. When a courier does elect to log on to the platform, indicating his or her availability for deliveries, he or she is free to work as much or as little as he or she wants.... Couriers ... may accept, reject or ignore a delivery request, without penalty. Moreover, while logged on to Postmates' platform, couriers maintain the freedom to simultaneously work for other companies, including Postmates' direct competitors." It said couriers provide their own transportation, choose the delivery routes they wish to take, are paid only for deliveries they complete, are not required to wear a uniform, and are not reimbursed for delivery-related expenses."

The dissenters argued there was substantial evidence the couriers are employees, saying Postmates "advertises for and conducts criminal background checks on couriers" and "provides couriers with a PEX reloadable credit card onto which it can load money in the event that a customer requests that a courier also purchase an item to be delivered." When a courier accepts an assignment, Postmates "sends the customer a photograph of and contact information for the courier, as well as an estimated time and cost of the delivery, which are set by Postmates. A courier is prohibited from using a substitute for the delivery." Deliveries "can be tracked by the customer and Postmates. Payment is made to Postmates," which "directly deposits into the courier's bank account the non-negotiable 80% of the charged fee.... Postmates handles customer complaints and monitors customer feedback ... and can block couriers" from its platform. In sum, they said the facts that Postmates "sets the fees, provides financing for the transaction..., handles customer complaints, bears liability for defective deliveries and actually tracks the delivery" is substantial evidence of employment.

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State of New York
Court of Appeals

To be argued Tuesday, February 11, 2020

No. 14 Matter of O'Donnell v Erie County

Sandra L. O'Donnell was working as a juvenile probation officer for Erie County in December 2010, when she slipped and fell on a wet floor at work and injured her back, elbows and knees, which required surgery. She returned to light duty the following month, but continued to experience problems working due to her injuries. After she was transferred to the adult probation division, which was more physically demanding, she applied for disability retirement. O'Donnell was granted a disability retirement and began receiving benefits in March 2013, at the age of 57 and after more than 28 years as an Erie County employee. She has not looked for other work since her retirement.

In September 2015 (the "classification date"), a Workers' Compensation Law Judge (WCLJ) classified O'Donnell as having a permanent partial disability, awarded benefits, and found she had "a compensable retirement" that excused her from looking for work. The County and its Workers' Comp administrator appealed to the Workers' Compensation Board, arguing she was ineligible for benefits because she failed to seek employment. A panel of the Workers' Compensation Board (Board Panel) reduced her benefit award to $530.52 per week for a maximum of 375 weeks and otherwise affirmed, finding that O'Donnell "involuntarily withdrew from the labor market" due to her disabilities. The County sought full Board review.

In April 2017, while the County's request was pending, the State Legislature amended Workers' Compensation Law § 15(3)(w) to permit payment of benefits to claimants with a permanent partial disability "without the necessity for the claimant who is entitled to benefits at the time of classification to demonstrate ongoing attachment to the labor market." Three months later, the Board Panel amended its decision in O'Donnell's case to address the effect of the 2017 amendment. It said the WCLJ "found that [O'Donnell] was entitled to benefits at the time of classification based on the determination that she 'is excused from looking for work and in effect has a compensable retirement' (i.e. involuntary retirement). Therefore, in view of the amendment to WCL § 15(3)(w), the Board Panel finds that the claimant is not obligated to demonstrate an ongoing attachment to the labor market thereafter."

The Appellate Division, Third Department affirmed, holding that even though O'Donnell's injury occurred before the effective date of the 2017 amendment, section 15(3)(w) applies retroactively to pending cases and "obviates the need for claimant to demonstrate a continued attachment to the labor market ... subsequent to her retirement."

Erie County argues that O'Donnell's failure to seek other employment prior to her classification date made her ineligible for benefits at that time and, therefore, section 15(3)(w) does not relieve her of the need to prove her attachment to the labor market. The Workers' Compensation Board argues that it "inadvertently departed from its administrative precedent," which requires applicants for permanent partial disability awards to demonstrate a continued willingness to work prior to their classification, when it instead inferred O'Donnell's labor market attachment based on the involuntary nature of her retirement. It asks the Court to reverse and remit the matter to it for a corrected decision denying her application for benefits.

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For respondent Workers' Comp. Bd.: Asst. Solicitor General Patrick A. Woods (518) 776-2020
For respondent O'Donnell: Robert E. Grey, Farmingdale (516) 249-1342