



The Court's opinion plays into the strength of the dissent, for on the surface, Marleen's constructive fraud claim has nothing to do with ERISA or with an ERISA-governed employee benefit plan. She attacks neither the plan, the plan's administrator nor the plan's designated beneficiary – Christopher Barnett's estate. Rather, her quarrel is with Christopher designating Dora Barnett as the estate's beneficiary. Marleen sued the estate, the beneficiary of the estate, and third parties to whom Dora conveyed the policy proceeds. As written, the Court's opinion begs one to ask just how far down the line, as the money passes through more and more hands, does ERISA appropriately have an interest.

But all of this is really beside the point. *Egelhoff* is not about causes of action. *Egelhoff* is about property interests. Unfortunately for Marleen, it is the property right she seeks to enforce that matters.

Because Marleen's claim is predicated on an enforceable community property right in the life insurance proceeds, she could have as well made a claim against the plan administrator, who ordinarily could be forced, before the proceeds were distributed, to pay Marleen her share. It would not matter who the designated beneficiary was. And it is this type of interest ERISA won't permit, as the Supreme Court made clear in *Egelhoff*.<sup>2</sup> The Washington State statute at issue in *Egelhoff* was preempted because it "binds ERISA plan administrators to a particular choice of rules for determining beneficiary status. The administrator must pay benefits to the beneficiaries chosen by state law, rather than to those identified in the plan documents."<sup>3</sup> To permit Marleen's claim to continue would be to recognize her community

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at \_\_.

property rights, which would have the same effect, and “thus implicates an area of core ERISA concern.”<sup>4</sup>

It is therefore the community property right that interferes with ERISA and is preempted. Marleen cannot bring any claim, for constructive trust or otherwise, to enforce that right.

Although the Court’s reluctance to be so pointed is understandable, it should not cloak in its opinion the unavoidable reach of the Supreme Court’s ERISA jurisprudence. I concur in the Court’s opinion, parts I, II, III, V, and its judgment in this case; I write separately to expose the startling breadth of ERISA preemption as the Supreme Court interprets the statute, and its effect on community property rights.

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Craig T. Enoch  
Justice

Opinion delivered: December 6, 2001

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<sup>4</sup> *Id.*