

On a trial of 05/24/2016 on special appeal n.º 1.575.435, the 3rd panel of the Superior Justice Court upheld the São Paulo State Appellate Court's finding that a health care plan policyholder has no standing to be sued in a suit brought by a former employee, who had been given temporary coverage extension after his employment termination.

When declaring his vote, Justice Ricardo Villas Bôas Cueva, the rapporteur on the case, compared health care plans to group life insurance contracts: in the latter, a policyholder merely intermediates the insurance company and the group insured.

This precedent may yet arouse some concern for health care policyholders, because they not always act as a go-between. In fact, it is very usual for employers to not just cover the premiums but also pay for all medical and hospital expenses, in which they end up bearing costs from the outcomes of all actions beneficiaries take at a carrier.

The policyholder is also the one that holds information on the employment agreement that is necessary to support such processes, specially when the dispute is over how much a beneficiary pays as premium and the premium portion the policyholder subsidizes (to be borne by the beneficiary after his employment is terminated), among other issues involving this triangular relationship.

Articles 30 and 31 of Law 9.656/98 read as follows: "[consumer] is assured of his right to retain his beneficiary status, (...) provided the latter undertakes to pay for the plan in full." In practice, however, the courts not always understand the "full" premium amount as payable by beneficiaries and, consequently, they are allowed to pay less until the premium to be paid is calculated - and this evidence production may be postponed until a later stage in the case, i.e. the award calculation. In the case we mention here, the absence of the policyholder moots this evidence and, consequently, the policyholder will possibly be penalized by having to bear with such difference on its own.

Therefore, policyholders need to explain their position and stake in a proceeding with the aim of preventing this Superior Justice Court's precedent from applying to every case indiscriminately.

Fonte: [Demarest Advogados](#) , em 23.06.2016.