

806 S.W.2d 800
Supreme Court of Texas.

SOUTHLAND LIFE INSURANCE COMPANY, Petitioner,

v.

The ESTATE OF Martha SMALL, et al., Respondents.

No. D-0569. March 27, 1991.

Discharged employee brought action against former employer and former employer's group health insurer for breach of contract, breach of duty of good faith and fair dealing, fraud, negligence, gross negligence, intentional infliction of emotional distress, and violations of Texas Insurance Code, Deceptive Trade Practices Act, and Employee Retirement Income Security Act (ERISA). The 333rd District Court, Harris County, [Davie L. Wilson, J.](#), entered summary judgment in favor of insurer, and employee's estate appealed. The Houston Court of Appeals, Fourteenth Judicial District, [797 S.W.2d 74](#), reversed and remanded. Insurer filed application for writ of error. The Supreme Court held that: (1) ERISA preempted claims for negligence, fraud, intentional infliction of emotional distress, violation of Deceptive Trade Practices Act, and violation of Insurance Code, and (2) preemption claim was jurisdictional and could be raised by insurer initially on appeal.

Court of Appeals reversed.

Attorneys and Law Firms

*801 [Paul D. Clote](#), Houston, [David E. Cowen](#), Galveston, for petitioner.
[Jimmy Williamson](#), Houston, for respondents.

Opinion

PER CURIAM.

At the time of her non-work-related injury, Martha Small was employed by Mandel-Kahn Company and covered under a group health insurance policy issued by Southland Life Insurance Company. When she was dismissed by her employer six months after the accident, the insurer ceased payment of all medical expenses thereafter incurred.

Small then filed suit against Southland Life, Mandel-Kahn, and others alleging breach of contract, breach of the duty of good faith and fair dealing, fraud, negligence, gross negligence, intentional infliction of emotional distress, and violations of the Texas Insurance Code, Deceptive Trade Practices Act (DTPA), and Employees' Retirement Income Security Act (ERISA). The trial court granted Southland Life's motion for summary judgment based upon several non-ERISA related defenses. On appeal, for the first time, Southland Life additionally urged that all of Small's claims were preempted by ERISA. Rejecting this assertion as having been waived by its nonpresentation to the trial court, the court of appeals reversed and remanded. [797 S.W.2d 74](#).

1 2 The claims remanded to the trial court are among those defined as relating to an employee benefit plan and thus are preempted by ERISA. [Gorman v. Life Ins. Co. of North America](#), 1991 WL 7964 (Tex.1991); [Cathey v. Metropolitan Life Ins. Co.](#), 805 S.W.2d 387 (Tex.1991). Under [Gorman](#) and [Cathey](#), the court of appeals erred in holding that the preemption claim had been waived, since this defense is jurisdictional and can be raised initially on appeal. Pursuant to Tex.R.App.P. 170, we grant Southland Life's application for writ of error and, without hearing oral argument, a majority of the Court reverses the judgment of the court of appeals and renders judgment in favor of Southland Life.