

High Court ERISA Ruling Could Stretch Benefit Plans Thinner

By **Vin Gurrieri**

Law360, New York (January 20, 2016, 10:50 PM ET) -- The U.S. Supreme Court ruled Wednesday that a welfare plan couldn't recover medical payments from a plan participant's third-party settlement under the Employee Retirement Income Security Act, a ruling attorneys say could force plan administrators to institute costly measures to track litigation involving beneficiaries to quickly preserve any settlement funds.

In an 8-1 ruling penned by Justice Clarence Thomas, the majority said that the National Elevator Industry Health Benefit Plan couldn't sue plan beneficiary Robert Montanile under ERISA for reimbursement of about \$122,000 from a \$500,000 settlement he reached with an alleged drunken driver who caused his injuries because the settlement fund had already been dissipated.

As part of its ruling, the high court said that the plan in this case had sufficient notice of Montanile's settlement to have taken steps to seek recovery from that settlement fund. In particular, the justices said the plan could have objected to a notice from Montanile's lawyer that he intended to disburse the settlement funds to his client within 14 days, or filed suit much sooner than it did.

"The ruling effectively tells plans [that] you need to be out there with a magnifying glass watching court dockets," said Erin Sweeney, of counsel at Miller & Chevalier Chtd. "Plans have argued that it will be incredibly expensive to track these claims and they would rather spend the dollars paying out claims. It's a whole other line of business they will need to get up to speed with."

Plans Put On Notice

Mayer Brown LLP partner Nancy G. Ross noted that "one very obvious warning" that comes out of the high court's ruling is that "plans need to be vigilant and monitor" what is going on in situations in which they have paid medical bills for a person injured by a third party.

In order to avoid being left holding the bag by not being able to recover certain overpayments under ERISA, Sweeney says, benefit plans will have to file proactive lawsuits and preemptive requests for injunctions, as well as seek to intervene in cases in which recovery of expenses may be at stake.

Robert W. Rachal, a senior counsel at Proskauer Rose LLP whose practice centers on ERISA disputes, said the Supreme Court told benefit plans that their "right is over the property, not the person." As a result, plan administrators will have to "be more diligent" in making sure they act quickly after a beneficiary reaches a settlement to ensure their reimbursement claim is preserved.

Eric Keller, a Paul Hastings LLP partner, noted that the case provides a cautionary tale for benefit plans: “Don’t do what the plan in [Montanile] did and wait until the funds have been paid out” to plan participants.

Beneficiaries May Spend Quickly ...

The case also raises concerns about emboldened beneficiaries spending settlements in an effort to avoid repaying them to ERISA plans, attorneys said.

“One could argue that the message this case sends is [for plan participants] to quickly dissipate assets when [they] can,” Ross said. “The opinion is problematic because it does suggest that if a plan participant breaches the equitable lien and dissipates the assets, the plan has no remedy under ERISA.”

Ultimately, the case could lead to employers attempting to strengthen the terms of their plans by including language that requires participants to notify plan administrators within a specified time period of any third-party settlements. But even still, Ross says that plans will have to make sure that what they seek to recover qualifies as an equitable remedy under ERISA, or they may still get shut out of recovery.

“As a practical matter, [the ruling] increases pressure on plans to act quickly on the front end to lock it up once the [settlement] money comes in and not wait until it dissipates,” Rachal said, adding that “it’ll be expensive to track money if it’s not locked up.”

... Or Even Hide Assets

Barnes & Thornburg LLP employment partner Douglas D. Haloftis pointed to another potential problem with the Supreme Court’s ruling: It may give plan participants an incentive to hide third-party settlements from plan administrators to avoid potential repayments.

“The Supreme Court, without intending to, has provided encouragement to plan participants to obtain settlements, spend the money with impunity and then put up a shield to hide the settlement,” Haloftis said. “For large, multiemployer plans, it can be very difficult and very expensive to track litigation. It really does encourage participants to engage in mischief.”

As a result, Haloftis said, plan administrators may have to create whole new departments responsible for tracking such cases — steps that may still be unsuccessful since much of the litigation they’d be tracking is “shrouded in confidentiality.”

Montanile is represented by Peter K. Stris of Stris & Maher LLP.

The Board of Trustees of the National Elevator Industry Health Benefit Plan is represented by Neal Kumar Katyal of Hogan Lovells US LLP and John David Kolb of Gibson & Sharps PSC.

The case is Robert Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan, case number 14-723, in the Supreme Court of the United States.

--Additional reporting by Aaron Vehling. Editing by Jeremy Barker and Philip Shea.
