

Supreme Court rules on enforcement of ERISA plan subrogation clauses

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Introduction

Many employee benefit plans governed by the Employee Retirement Income Security Act 1974 (ERISA) require employers to pay covered medical expenses when a plan participant is injured by a third party. These plans usually contain subrogation clauses requiring the participant to reimburse the plan if he or she sues the third-party tortfeasor and recovers money damages.

Section 502(a)(3) of ERISA allows plan fiduciaries to sue to "obtain... appropriate equitable relief... to enforce... the terms of the plan". It is settled that plan fiduciaries may invoke Section 502(a)(3) to recover particular assets owed to the plans – as when the tort judgment has been segregated in an identifiable fund.

On January 20 2016 the Supreme Court held in *Montanile v Board of Trustees of the National Elevator Industry Health Benefit Plan* (No 14-723) that when the participant spends the proceeds of the tort judgment, the plan cannot sue under Section 502(a)(3) to recover the expenses it paid from the participant's general assets.

Facts

The petitioner in the case was injured by a drunk driver. He sustained serious injuries and his employer's benefit plan paid over \$120,000 to cover his medical expenses. The petitioner later sued the drunk driver and recovered a \$500,000 settlement. The plan fiduciary contacted the petitioner's attorney, seeking reimbursement for the plan, but the petitioner's attorney refused. The attorney notified the fiduciary that unless it objected within 14 days, he would disburse the settlement funds (less attorneys' fees) to the petitioner. The fiduciary did not respond and the attorney gave the petitioner the remaining settlement funds.

Six months later, the fiduciary sued the petitioner under Section 502(a)(3), seeking to recover the medical expenses it had paid. Because the petitioner represented that he had spent almost all the settlement funds, the fiduciary sought an equitable lien against the petitioner's general assets. The Eleventh Circuit held that this lien was enforceable, even after the petitioner had spent the specific fund (ie, the settlement money) to which the lien had originally attached.

Decision

By a vote of eight to one, the Supreme Court reversed. Writing for the majority, Justice Thomas explained that the "equitable relief" available under Section 502(a)(3) is limited to the forms of equitable relief that were typically available in equity prior to 1938, when courts of law and equity were merged. He consulted equity treatises and concluded that plaintiffs can ordinarily enforce equitable liens only against "specifically identified funds that remain in the defendant's possession or

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against traceable items" purchased with those funds. If the defendant has dissipated all of the specifically identified funds, the equitable lien is eliminated, leaving the plaintiff with only a personal claim for damages – which is a legal remedy, not an equitable one.

Thus, the court concluded, when a plan participant dissipates all of the money recovered for personal injuries on non-traceable items, the plan fiduciary may not sue under Section 502(a)(3) to enforce its equitable lien against the participant's general assets.

In a brief dissent, Justice Ginsburg criticised the previous decisions of the court that had interpreted Section 502(a)(3) to authorise only those forms of equitable relief available before 1938. That interpretation, she argued, was a "mistake" that the court should not "perpetuate".

Comment

Montanile is an important decision for administrators and fiduciaries of ERISA benefit plans that pay covered medical expenses for their participants. In light of the court's reading of Section 502(a)(3), actions to enforce a plan's right of subrogation against a participant who recovers money for injuries from a third party should be brought as soon as possible; indeed, where appropriate, plan fiduciaries may wish to consider intervening in tort actions filed by plan participants, because participants will be advised to dissipate any recoveries they might obtain as quickly as possible.

This decision will likely also have implications for other actions brought under Section 502(a)(3).

Overpayments from retirement plans are typically accidental and will rarely result in a lien on identifiable funds. This decision will make it more difficult for such overpayments to be recouped. Other actions under Section 502(a)(3) are brought by plan participants against plan fiduciaries. Insofar as the court has reaffirmed the rule that a plaintiff may seek only those forms of equitable relief that were typically available in equity before 1938, *Montanile* can be expected generally to limit remedies in actions filed against plan fiduciaries.

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