Supreme Court Nixes Plan's Reimbursement From Participant Who Spent Settlement Monies

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Late yesterday, the U S Supreme Court rejected a national group health plan's quest for reimbursement of $120,000 in plan-paid medical expenses from a participant's general assets, after the participant (injured in an auto accident) spent the $500,000 in settlement monies he had received from the driver at fault. *Montanile v. Board of Trustees of the National Elevator Industry Health Care Fund*, Sup. Ct. No. 14-723 (1.20.2016).

The lone dissenter from yesterday's decision, Justice Ginsburg, criticized the result reached by the Court as a "bizarre conclusion" that encouraged participants to "escape [their] reimbursement obligation. . . by spending the settlement funds rapidly on non-traceable items."

The Court's opinion turned on the esoteric theory of remedies available under ERISA, briefly discussed below. In essence, the decision appears to require health care and retirement plans to act promptly 1) to place participants on notice of their responsibilities to reimburse plans or to repay overpayments, and 2) to position themselves to identify or "trace" (and to preserve, if possible) specific funds due the plans that participants wrongly hold.

The Theory and Reach of the Opinion:

Section 502(a)(3) of the Employee Retirement Income Security Act (ERISA) allows recovery only for "appropriate equitable relief" and does not allow recovery for money damages. In its attempt to recover the $120,000, the NEIH Plan had failed to identify a specific fund in which Montanile had kept the settlement monies.

The Court again relied on a rule of equity it had identified in earlier cases: all types of equitable liens (including equitable liens by agreement) must be enforced against specifically

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identifiable funds within the participant-defendant's control. See, e.g., *Sereboff v. Mid-Atlantic Medical Services*, 547 U.S. 356 (2006). Moreover, the Court refused to apply the "swollen assets" doctrine which would have allowed the tracing of the settlement funds to commingled accounts and recovery against those accounts.

The Court criticized the NEIH Plan for not acting quickly enough when it learned from Montanile's counsel (who had refused the Board of Trustees' demand that the Plan be reimbursed) that he would distribute the funds from a trust account to his client. Because the record made in the lower court did not show clearly whether Montanile had commingled the settlement monies with his other assets or how much (if any) of the settlement monies remained, the Court sent the case back to the lower court for further development.

This decision foreshadows the difficulties that pension plans will probably now face when they seek recoupment or repayment from pension plan participants who have received overpayments of benefits, but have spent those monies before the plan's right to recoupment is discovered or demonstrated.

Next Steps to Protect the Plans:

Are health care plans now left without relief if they do not act quickly enough to demand payment from settlement funds received by participants? Can pension plans even seek repayment from participants who have received overpayments but who have spent their overpaid monthly benefits on "necessities"?

In a prior case in which the Court did permit a health care plan to recover for medical expenses, the plan had immediately demanded reimbursement as soon as it learned that the participant had received settlement monies from the third-party wrongdoer who had injured him. *US Airways v. McCutcheon*, 569 U.S. ___ (2013). One lesson to be learned from this cautionary tale? To protect the plan's rights, we suggest that you consult an ERISA/employee benefits litigation counsel as early as possible so that counsel can, for example, monitor litigation against a third party by an injured plan participant, present an assignment of claims to bring a derivative claim for direct payment, and/or demand payment immediately upon any settlement between the participant and a wrongdoer. That wrongdoer may have caused physical or other injuries to a participant compensated under an insurance plan (like Montanile), or the wrongdoer may be a service provider that miscalculated and overpaid a pension benefit (fiduciary misconduct perhaps covered by insurance).

To avoid dissipation of funds by participants, ERISA/employee benefits litigation counsel can also review with you whether the plan or its administrators or fiduciaries can or should seek a declaratory judgment and the sequestering of any monies for medical expenses received by the participant from the third party or the amount of an alleged pension overpayment in an escrow account held by the court or by an escrow agent during the pendency of the litigation.

Montanile teaches another lesson in its criticism of the NEIH Plan document. Now would be an excellent time to ask your employee benefits counsel to review your company's plan language on subrogation and reimbursement (in the case of health care plans) or on recoupment (in the case of pension plans). Such language should clearly warn pension plan participants that they must return to the plan any pension overpayments or monies received to redress injuries for which the plan has also paid.

If you have any questions or concerns about the effect of the decision on your plans or next steps to protect your plans, please do not hesitate to consult the author of this article or any Butzel employee benefits counsel or ERISA/employee benefits litigator.

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