

Montanile: A Cautionary Tale For ERISA Plans

In an 8-1 decision, the Supreme Court hewed closely to past precedent in ruling that ERISA plan fiduciaries have no right under Section 502(a)(3)^[1] to recover funds from plan participants where the funds have been spent by the participant on non-traceable items, notwithstanding the inherent inequity of such a result. *Montanile v. Board of Trustees of the Nat'l Elevator Indus. Health Benefit Plan* ("Montanile"), No. 14-723, 2016 WL 228344, at *1 (Jan. 20, 2016).

Montanile is no less than the fourth decision by the Supreme Court in this millennium that considers what constitutes "appropriate equitable relief" within the meaning of Section 502(a)(3). The case involved an all too common fact pattern in the ERISA health and welfare plan world, wherein a plan participant is injured and receives benefits from a group health plan for the treatment of his or her injuries. The participant then files a lawsuit against a third party for damages caused by his or her injuries and, thereafter, recovers funds from the third party through a settlement or a judgment. The plan then tries to recover the funds from the participant by pointing to the operative plan documents which contain a subrogation or reimbursement clause. If the plan is unsuccessful in obtaining the funds from the participant informally, as was the case in *Montanile*, it must file suit against the participant in federal district court to recover the funds by seeking "appropriate equitable relief...to enforce...the terms of the plan" pursuant to Section 502(a)(3).

Some additional background is important here. In *Great West Life Ins. & Annuity Co. v. Knudson* ("Great West"), 534 U.S. 204, 213 (2002), the Court ruled 5-4 that where funds belong in good conscience to the plan and are traceable to particular assets in the participant's possession, the plan's claim to *those* particular funds is, in essence, a claim for "restitution" which is "appropriate equitable relief" within the meaning of Section 502(a)(3). Thus, in *Sereboff v. Mid-Atlantic Medical Services, Inc.*, 547 U.S. 356, 363-64 (2006) the Court ruled that Section 502(a)(3) allowed a plan to enforce its contractual lien to recover specifically identifiable settlement funds that had been segregated in a separate account by the participant and then reaffirmed this proposition, on similar facts, seven years later in *US Airways, Inc. v. McCutchen*, 569 U.S. ____ (2013).

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The issue in *Montanile*, however, was whether the plan was seeking "appropriate equitable relief", within the meaning of Section 502(a)(3), where it sought to enforce an equitable lien on the participant's general assets because the participant had dissipated the specifically identifiable settlement funds owed to the plan on non-traceable items. The Court answered in the negative, holding that equitable remedies "are, as a general rule directed against some *specific* thing...rather than a right to recover a sum of money generally out of the defendant's assets." As such, the plan was not seeking "appropriate equitable relief" because it sought to recover from the participant's general assets as opposed to the specifically identifiable settlement funds to which the plan was entitled. The Court was also quick to dismiss the plan's argument that the basic purpose of ERISA supported such a recovery explaining that "[h]ad Congress sought to prioritize [such] policy arguments, it could have drafted [Section] 502(a)(3) to mirror ERISA provisions governing civil actions."

In dissent, Justice Ginsburg pointed to her *Great West* dissent and opined that the Court's continued efforts to narrowly construe "equitable" relief has "unraveled forty years of fusion of law and equity" and is a path the Court would be well-advised to depart from. In her view, the Court's decisions have resulted in patently inequitable results, including, for example, the fact that the participant in *Montanile* can now escape his obligation to reimburse the plan by simply "spending the settlement funds on non-traceable items." Moreover, Justice Ginsburg agreed with the reasoning of the Eleventh Circuit that "a plan can always enforce an equitable lien once the lien attaches, and that dissipation of the specific fund to which the lien attached cannot destroy the underlying reimbursement obligation."

The practical consequences of *Montanile* are significant in that it highlights the need for ERISA plans to act swiftly to recover funds from plan participants, a point the Court was quick to point out: "the nature of the [plan's] underlying *remedy* would have been equitable had it immediately sued to enforce the lien against the settlement fund." The decision also underscores the Court's hesitance to expand the remedies available under Section 502(a)(3) and, to the extent ERISA plans want broader remedies, The Congress—and not the courts—is the best vehicle for obtaining such remedies.

^[1] ERISA § 502(a)(3), codified at 29 U.S.C. § 1132(a)(hereafter, "Section 502(a)(3).")

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