

Supreme Court requires fast action for ERISA subrogation recovery

February 22, 2016

A nearly unanimous Supreme Court recently found that a health plan cannot recover amounts subject to subrogation if the recipient has already spent the settlement funds.

In *Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan*, 577 US ___ (2016), the participant was injured when a drunk driver ran a stop sign and hit his car. The plan paid medical expenses totaling more than US\$120,000. The plan contained language requiring that the plan be repaid if the participant recovered damages from a third party, and the participant signed an acknowledgement of that subrogation language.

The participant later was awarded a net settlement of US\$240,000. Prior to delivering that amount to the participant, his attorney contacted the plan and stated that amounts would be distributed to the participant unless the plan objected within 14 days. The plan failed to respond, and the remaining settlement amount was distributed to the participant. The participant then spent a portion of the settlement on so-called non-traceable items (such as food, services, travel, etc.).

The plan sued the participant to recover the amounts it expended for his medical care related to the car accident. The lower courts found in favor of the plan and required the participant to make payment to the plan despite the fact that a large portion of the settlement had been spent. Those judgments potentially would have required the participant to declare bankruptcy if he could not find other funds from which to reimburse the plan.

Upon review, the Supreme Court disagreed with the lower courts and found that the plan could only recover from the participant to the extent the settlement funds remained traceable. The basis for the court's holding was that the relevant language of the Employee Retirement Income Security Act (ERISA) requires an equitable remedy. In this instance, "equitable" does not mean the same thing as fair. Instead it relates to a distinction between different types of courts that existed many years ago. The Supreme Court was essentially saying that, based on ERISA's language and the court's understanding of the operation of those equity courts, the plan could only pursue its subrogation rights against traceable funds.

Based on the Supreme Court's decision in *Montanile*, sponsors of self-funded health plans should review their subrogation procedures to ensure that they contemplate quick action once a settlement is reached or a judgment is paid. That way, it will be more difficult for participants to avoid reimbursing the plan by spending the settlement on non-traceable items.

Plan sponsors may also want to consider including specific language in plan documents requiring that settlement or judgment funds remain traceable for a specific period of time after receipt by the participant (for example, six months). Although there is no guarantee that such language would overcome the *Montanile* ruling, it could provide plan sponsors with another argument against participants who expend their settlements instead of reimbursing the plan.

In addition, plan sponsors who outsource their subrogation activities should work with their outside administrators to

ensure that they have the resources in place to maximize the subrogation recovery amount. This can be of particular importance where the administrators are paid on a contingent basis.

Dentons lawyers are available to help clients review subrogation procedures and service agreements, amend plans and pursue subrogation claims.

Your Key Contacts



Katharina E. Babich

Partner, Kansas City

D +1 816 460 2612

katharina.babich@dentons.com