

Publications

# In-Depth: ERISA Subrogation – The “Make Whole” Doctrine as a Barrier to Reimbursement

**PUBLISHED**

12/01/2007

**SERVICES**

The Supreme Court’s recent decision in *Sereboff v. Mid-Atlantic Med. Servs., Inc.*, 126 S. Ct. 1869 (2006), involved the question of what “appropriate equitable relief” is available under Section 502(a)(3) of ERISA. The health insurance carrier in *Sereboff* brought a restitution claim under this ERISA enforcement provision.

The carrier sought to enforce a subrogation lien on tort settlement proceeds obtained by the *Sereboffs*, who were participants in a health plan maintained by the carrier. The carrier identified the *Sereboffs*’ settlement proceeds as property over which it sought to impose a constructive trust.

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