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Supreme Court's Subrogation Decision

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SERVICES

A MIXED BAG FOR PLAN SPONSORS

The Supreme Court has rendered its decision in Great West Life and Annuity Insurance Company v. Knudson, 99-1786 (Jan. 8, 2002), and has held that the ERISA plan fiduciary in that case lacked standing to enforce the plan's subrogation provisions in federal court under ERISA. Such provisions are common in health plans and provide generally that a participant who receives benefits from a plan for medical expenses and then recovers from a third party (e.g., in a case involving injuries sustained in an automobile accident) must reimburse the plan for the benefits he or she has received. In limiting a plan's ability to enforce such provisions, the Court has posed a challenge for plan sponsors and their insurers trying to limit health care expenditures. In the reasoning it has used, however, the Court has delivered what is likely to be good news for those same entities when they defend lawsuits, particularly in the burgeoning area of class action litigation against managed care companies.

The good news first: the Court's decision is a ringing affirmation of Mertens v. Hewitt Associates, 508 U.S. 248 (1993), the case which has proved to be a key to protecting plans from state law causes of action and their accompanying opportunities for punitive and extracontractual damages. In Knudson, the Court considered whether ERISA Section 502(a)(3) authorized suits by fiduciaries to enforce subrogation provisions. While that section clearly confers standing on a fiduciary and contemplates actions "to enforce the terms of the plan," it also authorizes the fiduciary to seek only "appropriate equitable relief." In Mertens, the Court had held that certain forms of relief must be characterized as "legal" and not "equitable" and that the former was not authorized by ERISA. The practical effect of the holding is that plans have successfully argued that class action complaints seeking money damages, no matter how the cause of action is pled, are not authorized by ERISA.

Prior to today's decision, there was concern that the Court was prepared to retreat from Mertens, but Knudson essentially says that the Court meant what it said in the earlier case. For example, in Varity v. Howe Corp., 516 U.S. 489 (1996), the Court had characterized Section 502(a)(3) as a "'catchall' provisio[n]" that "act[s] as a safety net, offering appropriate equitable relief for injuries caused by violations that _502 does not elsewhere adequately remedy." Id., at 512. The Court's rejoinder in Knudson was clear:

In Varity Corp., however, it was undisputed that respondents were seeking equitable relief, and the question was whether such relief was "appropriate" in light of the apparent lack of alternative remedies. Id., at 508. Varity Corp. did not hold, as petitioners urge us to conclude today, that _502(a)(3) is a catchall provision that authorizes all relief that is consistent with ERISA's purposes and is not explicitly provided elsewhere."

Slip Opinion at 16, n. 5 (emphasis in original).

The bad news is that subrogation has become a major element in many health plans' cost containment efforts, and this case will make it more difficult to obtain it. The Court's decision in Knudson reflects no recognition of that fact, nor of the practical impact the decision is likely to have. However, the Court's decision is quite narrow and we are already working on behalf of several clients to bring their subrogation activities within the ambit of Knudson so that they can continue to administer and enforce their subrogation/reimbursement provisions. Among other things, we are working on revising their federal court complaints and legal arguments to utilize causes of actions and theories that have been traditionally recognized as "equitable." The end result is far from clear because the distinctions drawn by the Court appear destined to lead to confusion and conflicting decisions in the lower courts as they are asked to consider fine distinctions in equitable doctrines that have not been used in decades. Nevertheless, we are confident that Knudson poses a problem that can be solved.