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## Supreme Court Holds that Plan Fiduciaries Cannot Seek Recoupment Under ERISA Section 502(a)(3) From Participant's General Assets

In late January, the Supreme Court denied a plan fiduciary's subrogation claim that attempted to recoup from the participant's general assets medical costs paid by the plan. In doing so, the Court focused heavily on the types of remedies available in traditional courts of equity and declined to broadly interpret the right to seek "other equitable relief" under section 502(a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"). While the decision may have the effect of somewhat limiting plan recovery efforts, the decision is consistent with the Court's prior decisions, and on a good news front for plan sponsors may lessen concerns regarding a potential expansion of ERISA section 502(a)(3) remedies that some have read into *Cigna v. AMARA*.

The Supreme Court's decision in *Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan* affects both retirement plans and health plans. The main impact, as explained below, relates to the timing of the enforcement of the plan's equitable lien and the funds from which the plan seeks recoupment.

### Background

Like many ERISA health and welfare plans, the National Elevator Industry Health Benefit Plan ("Plan") included subrogation language providing that, to the extent a participant recovers amounts from another party that are assets of the plan, such amounts are not distributable to any person without the Plan's release of its subrogation interest. The Plan also provided that any amounts recovered by a participant through an award, settlement, or judgment must first be applied to reimburse the Plan for benefits advanced by the Plan.

In December 2008, Robert Montanile, a participant in the Plan, was injured in a car accident that resulted in medical bills of approximately \$121,000. The Plan covered the cost of Mr. Montanile's medical coverage. In accordance with the Plan's subrogation provisions, Mr. Montanile signed a reimbursement agreement affirming his obligation to reimburse the plan from any recovery. Mr. Montanile obtained a \$500,000 settlement related to his December 2008 car accident, and after paying his attorneys, Mr. Montanile had \$240,000 remaining. This amount was held by Mr. Montanile's attorneys in a client trust account. While the amount was in a separate account, Mr. Montanile's attorney argued that the Plan was not entitled to any recovery, and he informed the Board of Trustees of the Plan that he would distribute the remaining settlement funds to Mr. Montanile unless the Board of Trustees objected within 14 days, which the Board of Trustees did not do.

Six months later, the Board of Trustees brought this case in District Court under ERISA section 502(a)(3), seeking repayment of the medical costs paid by the Plan.

### **Analysis**

In deciding this case, consistent with prior case law, the Supreme Court reasoned that whether “equitable relief” is sought depends on the basis for the claim and the nature of the underlying remedies. Generally, a claim to enforce a lien created by an agreement to convey a particular fund to another party is equitable. Similarly, enforcement of a lien against “specifically identifiable funds within the [beneficiaries’] control” is an equitable remedy. *Montanile v. Bd. of Trustees of Nat. Elevator Indus. Health Benefit Plan*, 136 S. Ct. 651, 658 (2016).

Applying this rule to the facts of this case, the Court held that because the amounts were not being sought from specifically identified funds in the defendant’s position or traceable items purchased with the funds (but rather from the participant’s general assets), the action does not seek equitable relief, and thus, cannot be brought under ERISA section 502(a)(3). The Court stated that though the claim is equitable, the remedy is not. If, however, the Board had brought suit immediately to enforce the lien against the settlement fund when in Mr. Montanile’s possession, the remedy would have been equitable and the suit could have been brought under ERISA section 502(a)(3). Specifically the Court stated, “when a participant dissipates the whole settlement on nontraceable items, the fiduciary cannot bring suit to attach the participant’s general assets under § 502(a)(3) because the suit is not one for ‘appropriate equitable relief.’” *Id.* at 655.

### **Key Takeaways for Plans**

Overpayments and payments that may be subject to subrogation rights are a common occurrence for ERISA plans. Retirement plans may pay participants additional amounts due to miscalculations, payroll errors, or other errors by service providers. Health plans are required to pay medical benefits in accordance with plan terms, and in some cases, these benefits may be the result of accidents or other occurrences that may trigger third-party settlements. In both the retirement and health context, ERISA requires that the plan fiduciary recover plan assets.

The Supreme Court’s decision narrows the timeframe within which plan fiduciaries can enforce their right to recoupment and limits the enforcement of such rights under ERISA section 502(a)(3), making their duty to recover plan assets more cumbersome.

Plan sponsors should review their plan documents and SPDs to ensure that they have clear language on subrogation and recoupment of overpayment to create a lien by agreement. This is a longstanding requirement that is unaffected by the Supreme Court’s *Montanile* decision; however, this is a good time to ensure that the plan language is sufficiently clear and that participants are on notice of the plan’s right to subrogation and recoupment.

In addition, given the latest guidance from the Supreme Court, plan sponsors should revisit plan operations to ensure that rights to subrogation and recoupment are asserted promptly. This may require closer monitoring of payment information and potential settlements. Plans should also be prepared to engage in asset tracing to determine whether amounts paid to the participant have been commingled with general assets, spent on traceable items (like cars), or used on non-traceable items (like food or services).

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