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Ford Motor Case Highlights ERISA Issues With Recovery of Overpayments

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The Sixth Circuit's recent decision in *Zirbel v. Ford Motor Company* (2020 BL 445882, Nov. 16, 2020) provides a useful illustration of the key issues that arise when ERISA plans seek to recover money from participants or beneficiaries. This issue comes up frequently in the context of benefit overpayments and subrogation claims. Whether a plan can recover in a given circumstance is often a complex and fact intensive inquiry – here, the Ford plan committee followed a thorough process that ultimately prevailed.

If you have any questions, please do not hesitate to contact your regular Groom attorney or the authors listed below:

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Facts and Issues

The dispute the Sixth Circuit addressed began when Donna Zirbel received an overpayment of $243,190 in pension benefits due to an error associated with a "QDRO" (a frequent problem area). The plan document provided that in the event of an error, the beneficiary was required to return the amount of the overpayment, although the administrative committee had discretion to reduce any repayment amount. When Ford, as plan administrator, sought repayment, Zirbel exhausted the administrative process and then sued Ford for a declaratory judgment allowing her to keep the money. Ford counterclaimed for equitable restitution of the overpayment pursuant to ERISA's provision for claims for "appropriate equitable relief".

On appeal, a Sixth Circuit panel applied the "arbitrary and capricious" standard of review to the question of whether the plan permissibly required Zirbel to return the overpayment. The panel noted that, although the plan permitted waiver, Zirbel did not apply for waiver on hardship grounds. The panel also rejected her assertion that the committee failed to discuss her argument that she had already spent the money, noting that the committee had considered the entire record, including her written arguments.

The panel then turned to the question of whether the plan was seeking legal, as opposed to equitable, relief. According to the Supreme Court, section 502(a)(3)(B) of ERISA authorizes only equitable, not legal relief, which means a plan cannot sue for a general money judgment, but instead must seek the return of specifically identifiable funds. *See, e.g., Montanile v. Board of Trustees of the National Elevator Industry*, 577 U.S. 136 (2016). The panel listed a car, house or investment funds as "traceable items" to which an equitable lien could attach, as opposed to non-traceable items, such as food.

Zirbel argued the funds were no longer specifically identifiable because she had placed them in her investment account, made gifts to her children and paid taxes. The panel rejected the argument that comingling the overpayment with other assets in her investment account defeated the equitable lien. The panel also noted that Zirbel had not presented these arguments to the district court and had not even cited the Supreme Court's *Montanile* opinion.

Zirbel also argued Ford was equitably estopped from recovering the overpayment because she asked Ford for confirmation that the number was right and it did not change its calculation. The panel rejected this theory because Zirbel could not prove Ford's erroneous calculation constituted either intentional deception or gross negligence amounting to constructive fraud. Further, Zirbel was unable to show reasonable reliance on Ford's calculation because she knew all the facts necessary to deduce a reasonable estimate of the amount due, and, in fact, had actually come up with a ballpark estimate of the actual amount. The panel also rejected the argument that recoupment was "inequitable" because Zirbel knew the payment was too high when she got it, the plan put her on notice Ford could demand repayment and she admitted having the capacity to return the money. Zirbel has now petitioned the full Sixth Circuit to rehear her case.

Takeaways

The key difference between the panel's decision in *Zirbel* and the Supreme Court's *Montanile* opinion is that Zirbel was unable to convince the panel that comingling with the overpayment with her other assets – and then spending an amount equal to the overpayment on other items, such as gifts and taxes – created the absence of a specifically identifiable fund upon which an equitable lien could attach, whereas Montanile had spent all of the money he received on non-traceable items. However, plan administrators will often lack knowledge as to whether specific funds have been fully dissipated or not. A robust administrative process such as Ford's will often clarify these issues and lead to a successful recovery. Nevertheless, recovering overpayments from participants and beneficiaries remains a potentially challenging and fact-intensive process.

Groom regularly counsels clients on disputed claims and assists in developing robust, legally compliant processes. Please reach out to Pat DiCarlo to discuss how we can best support you in this critical area.