

**Sereboff v. Mid Atlantic Medical Services, Inc., U.S. No. 05-260, cert. granted 11/28/05**

On November 28, 2005, the United States Supreme Court granted petitioners' request for review in *Sereboff v. Mid Atlantic Medical Services, Inc.*, U.S. No. 05-260. This case gives the Court an opportunity to resolve the circuit split on how to apply the Court's 2002 decision in *Great-West Life & Annuity Inc. v. Knudson*, 534 U.S. 204 (2002), and determine what types of remedies constitute "equitable relief" available under ERISA § 502(a)(3). The precise legal question before the Court is whether plans can enforce rights contained in the employer's plan document to require plan participants to reimburse medical expenses.

The Sereboffs' brief was filed on January 19, 2006. MAMSI's (Mid Atlantic Medical Services, Inc. ("MAMSI")) brief is due on February 23, 2006. Amicus briefs in support of MAMSI are also due by February 23, 2006. The Sereboffs' reply is due by March 21, 2006. The Supreme Court will hear oral argument on March 28, 2006.

**Brief Summary:**

This case presents a question that is the subject of a four-to-two conflict that was addressed but left open by the Supreme Court in its 2002 decision in *Great-West Life & Annuity Inc. v. Knudson*.

The Sereboffs, who are residents of Maryland, were plan participants in a self-funded health plan sponsored and maintained by Ms. Sereboff's employer. MAMSI is a fiduciary of the plan. In 2000, the Sereboffs were injured in an automobile accident while visiting California. The plan paid \$75,000 in medical expenses on behalf of the Sereboffs.

The Sereboffs sued the party responsible for their injuries in state court in California and recovered a \$750,000 settlement. After the Sereboffs refused to repay the plan for their medical expenses, MAMSI sued the Sereboffs in the District of Maryland under section 502(a)(3) of ERISA, asserting the plan's subrogation rights and requesting, among other forms of relief, restitution of and a constructive trust over the disputed settlement funds held by the Sereboffs.

MAMSI moved for summary judgment, asserting that the claim to recover the disputed proceeds sought "appropriate equitable relief" under ERISA § 502(a)(3). The Sereboffs responded that MAMSI's claim sought monetary damages that are not permissible under ERISA. The district court ruled in MAMSI's favor.

The Fourth Circuit joined the majority of other Circuits that have considered this issue – the Fifth, Seventh and Tenth - and affirmed the district's court ruling, agreeing that the basis of MAMSI's claim and the remedy sought were equitable in nature. The Sixth and Ninth Circuits have reached the opposite conclusion and do not allow equitable subrogation even when, as here, the disputed funds are specifically identifiable, belong in good conscience to the plan, and are within the possession and control of the defendant.

This circuit split reflects two varying interpretations of *Great-West*. *Great-West* involved a plan participant who had settled her claim against the third party and obtained a substantial recovery, which was placed in a "special needs" trust set up to provide support for the plan participant for the rest of her life. The insurance company, acting in its role as plan fiduciary, sued the covered party to recover the amounts the plan had paid for her medical care, even though the covered person did not actually have possession of the settlement proceeds – the trust did.

Relying on the historical distinction between "legal" and "equitable" relief, the Supreme Court ruled that the plan's lawsuit was a suit to hold the participant personally liable for "money damages," a traditional form of "legal relief." The Supreme Court concluded that under these circumstances, ERISA, which authorizes plan fiduciaries to obtain only "appropriate equitable relief, did not permit the type of "legal" relief, *i.e.*, an award of money damages, sought by the insurer in *Great-West*. The Court suggested, but did not actually rule, that a plan fiduciary might be able to proceed under ERISA § 502(a)(3) to impose a constructive trust on the proceeds of the covered person's recovery from a third party if the plan could identify a specific fund of money that belonged in good conscience to the plan.

Working within *Great-West's* guidelines, plan fiduciaries have reframed their claims against plan participants to seek equitable relief, most often in the form of a constructive trust. As in the decision by the Fourth Circuit in *Sereboff*, this approach permits plan fiduciaries to continue to enforce the reimbursement rights contained in plan documents. The Sixth and Ninth Circuits, however, have ruled that such suits are always suits to obtain money damages, the traditional form of legal relief that ERISA § 502(a)(3) does not allow.

### **Significance of Case:**

The enforceability of reimbursement rights affects millions of employers and employees who participate in ERISA plans. Plans sponsored by both single-employer and multi-employer plans routinely seek to recoup the costs of medical benefits through reimbursement provisions similar to the one at issue in *Sereboff*. This issue affects the ability of plan fiduciaries to recoup approximately one billion dollars annually on behalf of employee benefit trust funds.

The plans' ability to seek reimbursement of benefits from plan participants who have recovered funds from third parties is important to plans' continued financial security. Reimbursement and subrogation reduce the cost of health care coverage by allowing ERISA plans to use subrogation recoveries to pass on savings to employers and employees in the form of lower health care costs and protects the financial viability of employer-sponsored plans. If employees' medical expenses skyrocket, so does an employer's liability. The Fourth Circuit's decision helps protect the financial viability of employer-sponsored plans.

When enforced in a manner consistent with the Fourth Circuit's decision in *Sereboff*, reimbursement rights also avoid windfall double recoveries by participant-plaintiffs of medical

expenses – first when the plan pays for them and then, again, in a separate tort suit or settlement. Recouping such funds not only helps plans control the costs of providing benefits to other participants and beneficiaries, but also precludes participant-plaintiffs from unjustly enriching themselves at the expense of the plan and other participants. Reimbursement provisions also prevent tortfeasors from profiting from the existence of participants' and beneficiaries' health care coverage.

It is crucial that the Supreme Court does not adopt the approach taken by the Sixth and Ninth Circuits. If the Supreme Court accepts the position advanced by the Sereboffs and adopts a rule that prohibits the plan's ability to recover, plans will face pressure either to increase premiums or reduce benefits in order to preserve the plans' continued financial security.

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