

ERISA Plans: Don't Wait Until the Money's All Gone

Labor & Employment Law Update

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On January 20, 2016, the Supreme Court made it clear, in *Montanile v. Board of Trustees of National Elevator Industry Health Benefit Plan*, that ERISA plans wanting to enforce subrogation rights against a participant need to act **quickly**. If the participant spends all of his/her settlement funds on nontraceable items before the plan files suit for reimbursement, the plan is out of luck.

In December of 2008, plan participant, Robert Montanile, was severely injured when a drunk driver ran through a stop sign and crashed into his vehicle. The health plan, in which Montanile was a participant, paid at least \$121,044.02 for Montanile's initial medical care. Not only did Montanile's health plan contain a typical subrogation provision, Montanile also signed a separate reimbursement agreement reaffirming his obligation to reimburse the plan from any recovery or settlement he received.

Montanile pursued litigation against the drunk driver and obtained a \$500,000 settlement. From those funds, Montanile paid his attorneys \$200,000 plus \$60,000 for costs advanced to him during the litigation. Montanile's attorney set aside the remaining \$240,000 in a client trust account.

However, when the plan sought reimbursement, Montanile's attorney did not agree. Settlement discussions eventually broke down. At that point, Montanile's attorney notified the plan that he was distributing the entire \$240,000 directly to Montanile unless they objected within 14 days. The plan didn't respond and instead, six months later, filed federal litigation seeking reimbursement pursuant to ERISA §502(a)(3). Meanwhile, Montanile's settlement funds were disappearing.

The Supreme Court confirmed in its opinion that ERISA §502(a)(3) limits subrogation claims to equitable relief. More simply put, a plan is only allowed to collect from the specific funds that a participant receives as settlement or judgment resulting from his/her injury. The Court held that if Montanile did not keep the settlement funds in a separate account or if he spent the whole settlement on nontraceable items (for instance, on services or consumable items like food), there would be nothing else that ERISA would allow the plan to seek reimbursement from – regardless of Montanile's wrongful behavior.

The Court acknowledged the plan's concerns that such an interpretation of ERISA would take away effective or cost efficient remedies for plans and encourage participants to spend settlement funds as quickly as possible. However, the Court indicated that health plans are in a position to control and prevent such behavior by monitoring medical care participants require and tracking and investigating expensive claims.

What does it all mean for employers? Employers with fully-insured health plans can most likely leave it to their insurance carrier to track and investigate expensive claims. However, employers with self-insured health plans should work with their TPA to make sure a process is in place to monitor and track expensive claims preserving their right to subrogation.

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