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Related Lawyers

Matthew I. Whitehorn
Stephanie Searles Vogel

Related Practices

Employee Benefits

Media Contact

Peter Dunn
Director of Client
Relations and
Communications
Philadelphia, PA
pdunn@dilworthlaw.com

ERISA PLAN FIDUCIARIES MUST AGGRESSIVELY PURSUE SUBROGATION RIGHTS OR POTENTIALLY LOSE OUT

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The U.S. Supreme Court recently issued an opinion, that mandates the importance of an ERISA plan fiduciary (typically the plan sponsor or administrator) acting quickly to enforce subrogation rights for reimbursement of medical expenses paid by the plan under the plan's subrogation clause where the plan participant has obtained a recovery from or made a settlement with the wrongdoer. In *Montanile v. Board of Trustees of National Elevator Industry Health Benefit Plan*, the Court held that where an ERISA-plan participant has expended a third-party settlement resulting from a personal injury claim on nontraceable items (such as food, travel, or services), the plan fiduciary may not sue to attach the participant's general assets for reimbursement of such plan's payment of medical expenses because such a lawsuit does not seek "appropriate equitable relief" under ERISA section 502(a)(3). Mr. Montanile had been injured by a drunk driver who ran a stop sign and later received a settlement for his injuries. Mr. Montanile's attorney had offered the trustees of the medical plan that had paid a substantial amount for Montanile's medical care the opportunity to object to the distribution of settlement funds to which the trustees did not respond. Montanile then spent all of the settlement proceeds.

The Court presumably ruled that ERISA plan fiduciaries may enforce an equitable lien "only against specifically identifiable funds that remain in the defendant's possession or against traceable items that the defendant purchased with the funds." Further, the Court stated that it is irrelevant whether the participant was aware that the plan had asserted a subrogation right prior to spending the funds. In *Montanile*, the plan administrator did not file a claim under ERISA section 502(a)(3) until six months after the third-party settlement funds were dispersed to the defendant.

The Court's holding makes it critically important that plan fiduciaries, especially of self-insured plans, carefully review the subject plan's subrogation provisions, monitor participants' cases against third parties, and quickly move to enforce their subrogation rights should a source of reimbursement become evident through settlement or a judicial determination. We recommend you consult with the Dilworth's employee benefits attorneys or your third-party administrator to determine how this ruling may affect your Plan.

Click [here](#) to read the full opinion.