
Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan, No. 14-723

Many employee benefit plans governed by the Employee Retirement Income Security Act of 1974 (ERISA) require

employers to pay covered medical expenses when a plan participant is injured by a third party. These plans usually

contain subrogation clauses requiring the participant to reimburse the plan if he or she sues the third-party

tortfeasor and recovers money damages.

Section 502(a)(3) of ERISA allows plan fiduciaries to sue to “obtain . . . appropriate equitable relief . . . to enforce .

. . . the terms of the plan.” It is settled that plan fiduciaries may invoke Section 502(a)(3) to recover *particular* assets

owed the plans—as when the tort judgment has been segregated in an identifiable fund. Today, the Supreme Court

held in *Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan*, No. 14-723, that when

the participant *spends* the proceeds of the tort judgment, the plan cannot sue under Section 502(a)(3) to recover

the expenses it paid from the participant's general assets.

The petitioner in the case was injured by a drunk driver. He sustained serious injuries, and his employer's benefit plan paid over \$120,000 to cover his medical expenses. The petitioner later sued the drunk driver and recovered a \$500,000 settlement. The plan fiduciary contacted petitioner's attorney, seeking reimbursement for the plan, but petitioner's attorney refused. The attorney notified the fiduciary that unless it objected within 14 days, he would

disburse the settlement funds (less attorneys' fees) to petitioner. The fiduciary did not respond, and the attorney

gave petitioner the remaining settlement funds.

Six months later, the fiduciary sued petitioner under Section 502(a)(3), seeking to recover the medical expenses it

had paid. Because petitioner represented that he had spent almost all the settlement funds, the fiduciary sought an

equitable lien against petitioner's general assets. The Eleventh Circuit held that this lien was enforceable, even

after the petitioner had spent the specific fund (*i.e.*, the settlement money) to which the lien had originally attached.

By a vote of 8 to 1, the Supreme Court reversed. Writing for the majority, Justice Thomas explained that the

“equitable relief” available under Section 502(a)(3) is limited to the forms of equitable relief that were typically

available in equity prior to 1938, when courts of law and equity were merged. He consulted equity treatises and

concluded that plaintiffs could ordinarily enforce equitable liens only against “specifically identified funds that

remain in the defendant's possession or against traceable items" purchased with those funds. If the defendant

dissipated all of the specifically identified funds, the equitable lien was eliminated, leaving the plaintiff with only a

personal claim for damages—which was a *legal* remedy, not an equitable one.

Thus, the Court concluded, when a plan participant dissipates all of the money recovered for personal injuries on nontraceable items, the plan fiduciary may not sue under Section 502(a)(3) to enforce its equitable lien against the participant's general assets.

In a brief dissent, Justice Ginsburg criticized the previous decisions of the Court that had interpreted Section

502(a)(3) to authorize only those forms of equitable relief available prior to 1938. That interpretation, she argued,

was a “mistake” that the Court should not “perpetuate.”

Montanile is an important decision for administrators and fiduciaries of ERISA benefit plans that pay covered

medical expenses for their participants. In light of the Court's reading of Section 502(a)(3), actions to enforce a

plan's right of subrogation against a participant who recovers money for injuries from a third party should be

brought as soon as possible; indeed, where appropriate, plan fiduciaries may wish to consider intervening in tort

actions filed by plan participants, because participants will be advised to dissipate any recoveries they might obtain

as quickly as possible.

This decision will likely have implications for other actions brought under Section 502(a)(3), as well. Overpayments

from retirement plans are typically accidental, and will rarely result in a lien on identifiable funds. This decision will

make it more difficult for such overpayments to be recouped. Other actions under Section 502(a)(3) are brought by

plan participants against plan fiduciaries. Insofar as the Court has reaffirmed the rule that a plaintiff may seek only

those forms of "equitable relief" that were typically available in equity prior to 1938, *Montanile* can be expected

generally to limit remedies in actions filed against plan fiduciaries.

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