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When a fiduciary to an employee benefit plan overpays a plan participant, the fiduciary must resort to remedies offered by the Employee Retirement Income Security Act (ERISA). Section 502(a)(3) of ERISA authorizes a fiduciary to recover “appropriate equitable relief”—a nebulous concept that has triggered much litigation. That provision permits a fiduciary to enforce an equitable lien over an overpayment when the fiduciary can identify a particular fund within the beneficiary’s control that constitutes the alleged overpayment. Today, the Supreme Court granted certiorari in *Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan* to decide whether “appropriate equitable relief” is available to a plan fiduciary that wants to recover an overpayment but cannot identify the particular fund that constitutes the overpayment. This issue is of importance to businesses that administer employee benefit plans governed by ERISA, particularly those with ERISA-governed health insurance plans, which are most often confronted with the need to recover overpayments.

In this case, a beneficiary of an ERISA-governed health insurance plan received a benefit payment of more than \$100,000 for injuries stemming from an automobile accident. After the beneficiary recovered an even greater amount in a lawsuit against another driver, the plan fiduciary sued to recover the benefit payment, invoking a plan provision requiring reimbursement of “any amounts received from another party.”

On summary judgment, the district court ruled for the plan fiduciary and the Eleventh Circuit affirmed. Relying on the Supreme Court’s decisions in *Sereboff v. Mid Atlantic Medical Services*, 547 U.S. 356 (2006), and in *US Airways, Inc. v. McCutchen*, 133 S. Ct. 1537, the lower courts held that the settlement funds were subject to an equitable lien even if they were subsequently disbursed or commingled with other funds. A total of six federal courts of appeals have taken that view, while two courts have held that an equitable lien is unavailable unless the funds can be specifically identified at the time of suit. Recognizing the need for Supreme Court intervention, the plan fiduciary (Respondent here) agreed with the beneficiary (Petitioner here) that certiorari was warranted.

Absent extensions, which are likely, amicus briefs in support of the Petitioner will be due on May 21, 2015, and amicus briefs in support of the Respondent will be due on June 22, 2015. Any questions about this case should be directed to [Brian D. Netter](#) (+1 202 263 3339) in our Washington, D.C., office or [Nancy G. Ross](#) (+1 312 701 8788) in our Chicago office.