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BREAKING NEWS ON ERISA

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PRESIDENT AND CHIEF LIEN COMPLIANCE OFFICER

Yesterday morning the United States Supreme rendered a surprising opinion regarding an ERISA plan's (Plan) right to reimbursement from the plan beneficiary (Beneficiary) upon receipt of settlement or judgment funds in a personal injury case. The ERISA statute authorizes the Plan to file suit "**to obtain…appropriate equitable relief…to enforce…the terms of the plan"**. 29 U.S.C. §1132(a) (3). Various federal appellate court decisions have split on the issue of whether the Plan could seek reimbursement from "traceable" settlement funds only, or, if the Beneficiary dissipated and/or comingled the funds, the Plan could seek reimbursement from the Beneficiary's "general assets".

In *Montanile v. Board of Trustees of the Elevator Industry Health Benefit Plan*, _U.S_, 2016 WL 228344, (January 20, 2016), the court held that, in order for the Plan to successfully seek reimbursement, the funds must be traceable. The Plan has no right, per the "equitable remedies" aspect of ERISA, to seek reimbursement from a beneficiary's "general assets".

One caveat to the impact of this decision is that the particular facts of the case may have contributed to the Court's denial of the Plan's arguments. As recited therein, the relevant facts are:

> "The Board protests that tracking and participating in legal proceedings is hard and costly, and that settlements are often shrouded in secrecy. The facts of this case undercut that argument. The Board had sufficient notice of Montanile's settlement to have taken various steps to preserve those funds. Most notably, when negotiations broke down and Montanile's lawyer expressed his intent to disburse the remaining settlement funds to Montanile unless the plan objected within 14 days, the Board could have—but did not—object. Moreover, the Board could have filed suit immediately, rather than waiting half a year."

In other words, the Plan arguably did not come into the case with very "clean hands".

Query?

What remedies do Plans have when the Participant does not notify the Plan of a personal injury case or settlement? All Plans contain the contractual requirement that the Participant notify the Plan of the existence of a case or settlement. Since the Plan is entitled to "equitable relief" only, the Plan cannot sue the Participant for contractual damages, as this is a purely "common law" remedy.

Related Cases

In *Montanile*, the court referred to another case: *Great –West Life & Annuity Ins. Co. v. Knudson*, 534 U. S. 204, (2002). In Great-West the court denied the Plan's quest to seek

reimbursement because the funds were not, nor ever was in the possession of the Participant. The Court found that the settlement funds went from the liability defendant to the Participant's attorney, then into a "restricted trust". The court held that seeking funds from the trust was a legal rather that equitable remedy, prohibited by ERISA.

Note however that in *ASC Recovery Services, et al. v. Griffin, et al*., 723 F. 3rd 518, 5th cir. 2013, the court, en banc, caled a similar process to be a "ruse" and allowed the Plan to impose a constructive trust against the trustee.

Also consider Louisiana Code of Profession Responsibility Sec. 1.15.

Conclusion

The scenarios of settlement are numerous. Be careful when settling a case when an ERISA Plan is involved.

If you have any questions, or need any help, feel free to call.

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