



*Examination of ERISA Lien
Issues in Personal Injury
Matters: From Definitions to
Applicable Doctrines*





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She has represented these health plans for 13 years across the country, including litigation before the Minnesota Department of Labor and Industry and the California Department of Industrial Relations. She has settled thousands of subrogation liens and obtained substantial recoveries on behalf of her clients. Prior to focusing her practice on representing health benefit plans, she was a trial lawyer at Stotis & Baird Chartered where she represented plaintiffs in personal injury, medical malpractice and wrongful death and businesses in commercial litigation. Ms. Paletta received her B.A. in Global Studies, cum laude from Rockhurst Jesuit University in Kansas City, MO and her J.D., cum laude from the Chicago-Kent College of Law in Chicago, Illinois.

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Course Description

This course examines ERISA health plan liens asserted against personal injury settlements. In addition, the course covers health plan funding, ERISA documents, reimbursement language, negotiating with health plans, reimbursement agreements, and equitable remedies.

Course Presentation

This course provides a broad fundamental examination in the primary practice area of personal injury and ERISA health plan liens for a new attorney or overview for any attorney.

Course Material

This material is intended to be a guide in general and is not legal advice. If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.



Course Learning Objectives and Outcomes

Participant will understand the duties, roles and responsibilities of counsel in situations involving health plan liens. What is an ERISA plan and defining an ERISA Plan.

Participant will learn the difference between Private Employer and Church organizations and the election by a Church for ERISA to apply to its Plan; Reasons to consider electing to be governed by ERISA.

Participant will learn ERISA preemption of state laws.

Participant will learn the terms of the Plan including the Plan Document vs. Summary Plan Description and how to negotiate with health plans.

Participants will develop an understanding about lien reimbursement requirements, the Made Whole Doctrine and the Attorney Fund Doctrine.

Participants will gain practical skills in the area of ERISA document review and learn Tips for Negotiating with the Plan.

Participant will learn about Reimbursement Agreements and Professional Liability together with Attorney's Liability to Lienholders.

Participant will learn about Equitable vs. Legal Remedies and Remedies Under Section 502 (a) (3).

Upon completion of the course, participants should be able to apply the course material; improve their ability to research, plan, synthesize a variety of sources from authentic materials, draw conclusions; and demonstrate an understanding of the theme and concepts of the course by applying them in their professional lives.



Timed Agenda:

Presenter Name: Eleanor F. Paletta

CLE Course Title: Examination of ERISA Lien Issues in Personal Injury Matters: From Definitions to Applicable Doctrines

Time Format (00:00:00 - Hours:Minutes:Seconds)	Description
00:00:00	ApexCLE Company Credit Introduction
00:00:20	CLE Presentation Title
00:00:32	CLE Presenter Introduction
00:01:00	CLE Substantive Material Presentation Introduction
00:01:09	What is an ERISA Plan
00:03:19	Defining ERISA Plans
00:04:22	Church Plans
00:10:13	Employees and ERISA
00:12:27	The Savings Clause
00:16:09	ERISA Plan Funding
00:18:15	Fully Funded ERISA Plans
00:27:38	Litigation of the Plan Documents
00:28:53	Negotiating with the Health Plan
00:32:12	Minor's Estates
00:35:33	Attorney Fee Liens
00:36:27	The Made-Whole Doctrine
00:38:20	Reimbursement Agreements
00:41:10	The Rules of Professional Responsibility
00:48:42	Equitable vs. Legal Remedies
01:03:15	Federal Fair Debt and Collection Practices Act
01:11:25	ERISA Highlights
01:15:10	Presenter Closing
01:15:32	ApexCLE Company Closing Credits
01:15:34	End of Video



Part 1: ERISA Plans

What is an ERISA plan?

- ERISA is the acronym for the Employee Retirement Income Securities Act of 1974
- The Act was established by Congress to uniformly regulate employee welfare benefit plans.
- Because Congress intended ERISA to be a nationwide statutory scheme, Congress provided that only Federal law will control ERISA governed plans.

ERISA Plans Defined:

ERISA defines “employee welfare benefit plan” as any plan established by a private employer for the purpose of providing medical benefits for its employees, whether funded by the purchase of insurance, or otherwise.

Private Employer:

- If the employer is a government or church organization, then the plan is not governed by ERISA.

Employees:

- If an employer provides a group health plan which covers one or more of its employees (that are not in the same household), the plan is governed by ERISA.

CHURCH ORGANIZATIONS:

- Church related organizations including certain schools, hospitals, and charitable organizations often operate their retirement and welfare benefit plans under a belief that they are governed by ERISA.
- However, given the broad scope of the Church Plan exception as defined by the courts, church-related organizations that have not



affirmatively elected to be governed by ERISA are vulnerable to a determination that ERISA does not apply and the plan is therefore subject to state law.

- The courts have determined that a plan established or maintained by a non-church organization falls within the definition of a church plan if the organization is “controlled by” or associated with a church”.
- “controlled by” is not defined by ERISA but Courts have taken the language as referring to corporate control such as control over the appointment of a majority of the non-church organizations Board of Directors.
- ERISA provides that an organization is associated with a church if it shares religious bonds and convictions with that church.
- It is not uncommon for the Church to exercise some degree of corporate control over the organization. Ethical and religious directives are often incorporated into the bylaws of the organization and adherence to those directives is frequently a condition of employment.
- The church invariably retains the exclusive right to adopt or change the organization’s mission, philosophy and values.
- So, the controlled by or associated tests will almost always lead to the conclusion that these plans are church plans and are subject to state law unless an affirmative election to be governed by ERISA has been made.

Church plans can elect for ERISA to apply to the Plan:

- In order to make the election the Plan Administrator must comply with the requirements set forth in the Code of Federal Regulations.
- Once the election is made, it is irrevocable with respect to that Plan.

Reasons to consider electing to be governed by ERISA:



- ERISA significantly limits liability for plans, plan sponsors, and plan fiduciaries.
- Lawsuits are heard in Federal court rather than State court.
- State causes of action such as misrepresentation and break of contract generally will not be heard.
- ERISA preempts state law remedies like punitive damages, pain and suffering and consequential damages.
- ERISA limits damages to the value of the benefit.
- Section 504 of ERISA requires claimants to follow the Plan's claims and appeals process and exhaust those procedures before being allowed to file a lawsuit.
- Decision by the Plan are subject to the more favorable "arbitrary and capricious" standard of review.

EBSA:

- ERISA does not require any employer to establish a health plan but does require those who do establish plans to meet certain minimum standards.
- The Department of Labor's Employee Benefits Security Administration (EBSA) is responsible for administering and enforcing the provisions of ERISA as it applies to the administration of health and welfare benefits plans. Consumer information on health plans, compliance assistance for employers, plan service providers, and others to help them comply with ERISA can be accessed via their website: <http://www.dol.gov/ebsa>

ERISA PREEMPTION OF STATE LAWS

Preemption Clause:



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ERISA preempts state laws that “relate to” an ERISA covered plan.

Savings Clause:

The Savings clause protects state laws that regulate insurance from preemption

Deemer Clause:

The Deemer clause modifies the savings clause by preventing states from regulating self- funded ERISA plans.

FMC Corp. v. Holliday, 198 U.S. 52 (1990)

Facts:

Holliday filed a diversity suit in federal district court seeking a declaratory judgment that Pennsylvania law (which prohibits subrogation for MVA’s only) prohibited his employer, FMC Corporation ("FMC"), from exercising its right of subrogation. The district court granted the declaratory judgment.

Preemption Clause:

- ERISA § 514(a) provides that ERISA preempts state laws which "relate to" an ERISA covered plan.

Savings Clause:

- State laws are held to "relate to" an ERISA plan if the law has a "connection with or reference to" a covered employee benefit plan. The Pennsylvania anti-subrogation law refers to an ERISA plan when it states that the law is meant to "include, but [are] not limited to, benefits payable by a hospital plan corporation or a profession health service corporation".
- Therefore, the Pennsylvania anti-subrogation law is designed to regulate the insurance industry.
- However, the ERISA's savings clause states: "except as provided in [the deemer clause], nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance".



Deemer Clause:

- §514(b)(2)(B) forbids States from deeming employee benefit plans to be insurance companies, or to be engaged in the business of insurance, for the purpose of avoiding ERISA preemption through the saving clause.

Outcome:

- The Deemer clause exempts self-funded uninsured ERISA plans from state insurance regulation; however, the savings clause allows states to indirectly regulate insured ERISA plans by regulating the insurance companies running these plans.

Requests for Form 5500s

A. The Form 5500 may help to prove self-funding

- If your plan is insured, there is no need to request a Form 5500
- If your plan is self-funded, you can locate a copy of the 5500 on the DOL website yourself or request it from the subrogation/reimbursement agent representing the Plan.

B. Reviewing the form 5500

- Confirm plan name and year
- Review funding
 - a. Box 9a lists the funding sources.
 - b. Schedule A is filed for each insured benefit plan
 - c. Schedule C is filed for contract administrators (TPAs of self-funded health plans). Schedule C is not required

C. Request ERISA Documents via the 29 USC Letter

- The Request must be submitted to the Plan Administrator not the third-party claims administrator or the reimbursement agent
- Any monetary fine that may be assessed against a plan administrator for failing to provide certain documents is solely at the court's discretion.



Part 2: The Terms of the Plan

Plan Document vs. SPD

The ERISA Statute requires health plans governed by ERISA to create both a plan and a summary plan description.

The “plan”:

- Established and maintained pursuant to a written instrument that complies with the features as set forth in 29 U.S.C. Section 1102(b). Also known as the plan document, the plan describes the plans terms and conditions related to operation of the plan.
- The plan sponsor is responsible for the creation of this document.

The “summary plan description” or “SPD”:

- Required by the ERISA Statute and must contain information in regard to eligibility, scope of benefits and responsibilities of the participant.
- This is a document created by the plan administrator that describes the plan and communicates the content of the plan document in a readily understandable form.
- In May 2011, The United States Supreme Court issued a ruling in the case of *Cigna v. Amara*, 2011 WL 1832824 where it stated, “we cannot agree that the terms of a statutorily required plan summary may be enforced as the terms of the plan itself.”
- The SPD terms are not the Plan Document terms.
- ERISA plans cannot rely on the subrogation or reimbursement provisions found solely in an SPD for enforcement under ERISA. The Plan Document itself must contain an enforceable right of subrogation and/or reimbursement.



- If the Plan Document does not incorporate the SPD and does not have a recovery provision or has an inconsistent recovery provision, the terms of the Plan Document control.
- A detailed discussion of the SPD v. Plan Document issue was provided by the U.S. District Court for the Western District of Pennsylvania when it remanded the *US Airways v. McCutchen* case, 2016 WL 1156778.
- Several Federal Courts have held that the SPD can be the Plan Document if it is the only document that exists:
 - ***MBI Energy Servs. V. Hoch***, 2019 U.S. App. LEXIS 19936 (8th Cir.) held that the SPD was the plan’s “written instrument” because it was the only document that existed and that the reimbursement provision in the SPD was enforceable
 - ***Mull v. Motion Picture Indus Health Plan***, 865 F. 3d 1207 (9th Cir. 2017) held the Plan may consist of the SPD and the Trust.
 - ***Rhea v. Alan Ritchey, Inc. Welfare Benefit Plan***, 858 F.3d 340 (5th Cir. 2017) upholding the SPD as Plan Document even though the SPD alluded to the existence of a separate, official plan document which did not in fact exist.
 - ***Board of Trustees v. Moore***, 800 F.3d 214 (6th Cir. 2015) which held the SPD was enforceable in the absence of a Plan Document
 - ***L & W Associates Welfare Ben. Plan v. Estate of Wines ex rel. Wines***, Slip Copy, 2014 WL 117349, E.D. Mich. 2014.

Part 3: Negotiating with the Health Plan

Plan Language controls the amount of reimbursement an ERISA plan is entitled to.

- Strong Language: Language which sets forth a priority of payment and expressly rejects the application of the Common Fund Doctrine.



- Weak Language: An ERISA Plan that is silent on the issue of fee allocation will have the Common Fund Doctrine applied as a default rule.

Illinois Laws

Minor's Estate (750 ILCS 65/15)

A. Reimbursement:

Under the Illinois Family Expense Act a minor child's medical expenses are the responsibility of his/her parents. Thus, any cause of action the minor has does not include a claim for medicals. Therefore, a health plan cannot seek reimbursement from the minor's settlement unless:

- 1) The plan contains specific language that the minor is a "third party beneficiary." *Sosin v. Hayes*, 630 N.E.2d 969 (Ill. App. 1994)

OR

- 2) The plan language can be used to show that the parents have an obligation to the plan to seek reimbursement for medical benefits paid. *Klem v. Mann*, 665 N.E.2d 514 (Ill. App. 1996)

Note: An ERISA plan may argue preemption of Illinois' minor's estate law. *Great-West Life and Annuity Ins. Co. v. Moore*, 133 F. Supp. 2d 677 (N.D. Ill. 2001).

Made Whole Doctrine

Effective 1/1/2013, 770 ILCS 23/50 adopts a "modified" made whole rule for Illinois. The amended language in this section provides that a subrogation claim arising out of the payment of medical expenses with respect to a claim for personal injuries shall be diminished by the same proportion that the claimants overall recovery is diminished by reason of the uncollectibility of the full value of the claim due to limited liability insurance or comparative



fault. The statute also requires a further reduction of the lien by a pro-rata share of the attorney's fee and litigation expenses.

Note: This doctrine may be preempted by ERISA (see *US Airways v. McCutchen*)

Attorney Fund Doctrine

A health plan that benefits from a common fund created by an attorney is required to pay a pro rata share of the cost of creating the fund, including attorney's fees. *Baier v. State Farm Insurance*, 361 N.E.2d 1100 (Ill. 1977)

Also, the Illinois Supreme Court in *Scholtens v. Schneider*, 671 N.E.2d 657 (Ill. 1996) and *Bishop v. Burgard*, 764 N.E.2d 24 (Ill. 2002) held that the attorney fund doctrine is applicable to ERISA and non- ERISA plans.

Note: This doctrine may be preempted by ERISA (see *US Airways v. McCutchen*), however in the case of *Schrempf, Kelly, Napp & Darr, Ltd. v. Carpenter's Health and Welfare Trust Fund*. 2015 IL App (5th) 130413 the Illinois Appellate Court held that an attorney's action against the plan for fees/costs would not be preempted by ERISA because the attorney is not a party to the health plan contract and the common fund doctrine would therefore apply.

Tips for Negotiating with the Plan:

- Documentation: Be prepared to provide written documentation to substantiate the basis for the reduction request.
- Do not entice litigation: If the case has settled assure the Plan that you are holding the funds in trust.
- Written confirmation



Part 4: Reimbursement Agreements and Professional Liability

Reimbursement Agreements

- A signed reimbursement agreement is not required in order for the contractual reimbursement provision of the health plan to be valid.
- By accepting benefits under the Plan, the participant is bound by the terms of the Plan.
- Refusal to sign a reimbursement agreement may be a basis for denial of benefits.

Attorney's Liability to Lienholders

- An attorney who has notice of a subrogation claim and refuses to honor it at time of settlement may be directly liable to the lienholder. *Western States Insurance Co. V. Louis E. Olivero*, 670 N.E.2d 333 (1996) and *Health Cost Controls v. Bode*, 1994 U.S. Dist. LEXIS 7820 (N.D. Ill. 1994).

Professional Liability

- The rules of professional conduct in most states contain a section addressing the safekeeping of property
- Where there is a dispute, the portion in dispute must be kept separate until the dispute is resolved.

Illinois Rules of Professional Conduct

Rule 1.15. Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property



(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property

(c) When in the course of representation, a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

Central States v. Lewis, 745 F.3d 283

Facts:

In July 2011, the health insurer brought an action under ERISA against Beverly Lewis and her lawyer, seeking to enforce a subrogation lien against the settlement proceeds of a tort action against the driver of a car involved in an accident, for which the insurer paid for the cost of Ms. Lewis' medical treatment.

The Plan had paid \$180,000 in benefits and Lewis' attorney had obtained a \$500,000.00 settlement. When the attorney recovered the settlement proceeds, he split the proceeds between himself and his client.

- In February 2012, the Plan moved the district court for entry of a preliminary injunction against Beverly Lewis and her attorney's disposing of the settlement proceeds until the Plan received its \$180,000.00 share.
- The District Court judge granted the motion in May and also ordered Lewis and her attorney to place at least \$180,000.00 in the attorney's trust account pending a final judgment in the case.



- Lewis and her attorney didn't comply with either of the court's orders. They said they couldn't pay the \$180,000.00.
- A year later, the District Court held Lewis and her attorney in civil contempt because they hadn't placed any part of the \$180k in a trust account or produced any evidence of their inability to pay.
- They were ordered to produce records that would establish their financial situations and the attorney was ordered to submit a variety of documents to the General Counsel of the State Bar of Georgia for possible disciplinary proceedings against him.
- Lewis and her attorney appealed the District Court order holding them in contempt and the finding of civil contempt was upheld on appeal.
- The appellate court found Lewis and her attorney's affidavits regarding inability to pay grossly inadequate. In their affidavits they both stated the settlement money had been spent but didn't provide any information regarding their assets.

Notes:

- "We are issuing an order to the defendants to show cause why they should not be sanctioned under Rule 38 for filing a frivolous appeal. Their response is due within 30 days from the date of this decision"
- "The defendants' conduct has been outrageous. After resolving the merits of the underlying suit, the district court should give serious consideration to transmitting copies of this opinion and the record to the Department of Justice and to the General Counsel of the Georgia Bar. In the meantime, we direct the district court to determine whether the defendants should be jailed a standard remedy for civil contempt."

Part 5: Equitable vs. Legal Remedies

Remedies Under Section 502 (a) (3)

- Section 502 (a) (3) of the ERISA statute authorizes a civil action by a plan participant, beneficiary or fiduciary to enjoin any act or practice which



violates the terms of the plan or to obtain other appropriate equitable relief to:

- Redress such violations or
- Enforce any provisions of the terms of the Plan.

Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204 (U.S. 2002)

Facts:

Claimant suffered serious bodily injury in a car accident. The group health plan covered \$411,157.11 of her medical expenses. The Plan included a reimbursement provision that gave the Plan the right to recover from a beneficiary any payment for benefits paid by the Plan that the beneficiary is entitled to recover from a third party and “a first lien upon any recovery, whether by settlement, judgment or otherwise,” that the beneficiary receives from the third party, not to exceed “the amount of benefits paid [by the Plan] ... [or] the amount received by the [beneficiary] for such medical treatment ...”

The personal injury claim settled for \$650,000.00. The settlement allocated the bulk of the recovery to attorney's fees and to a trust for claimant's medical care, and earmarked only \$13,828.70 (the portion of the settlement attributable to past medical expenses) to satisfy Great– West's reimbursement claim.

The Plan's assignee filed suit under § 502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA) to enforce the Plan's reimbursement provision by requiring the claimant and her husband to pay the Plan \$411,157.11 of any proceeds recovered from the third parties.

- Section 502(a)(3) authorizes a civil action:

“by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates ... the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of ... the terms of the plan.” 29 U.S.C. § 1132(a)(3) (1994 ed.)

Equitable and Legal Relief



Equitable: Equitable remedies are specific and impose personal obligations on the defendant to desist from certain acts or take a certain action. These are non-monetary remedies.

Legal: Legal remedies are substitutionary and result in judgments for money to compensate for injury.

Outcome: The ERISA plan's claim for reimbursement, by seeking to impose personal liability on the plan member, was essentially a claim for money damages which is not appropriate equitable relief under the ERISA Statute when the settlement proceeds have been dissipated.

Notes:

- The stop loss carrier took an assignment. The Plan is still a self-funded ERISA plan.
- The litigation did not include a claim against the Special Needs Trust. Knudson did not have possession of the funds.

“Nor do we decide whether petitioners could have obtained equitable relief against respondents' attorney and the trustee of the Special Needs Trust, since petitioners did not appeal the District Court's denial of their motion to amend their complaint to add these individuals as codefendants.”

“**tracing**” is a remedy that requires specifically identifiable funds or property in the defendant's possession.

Administrative Committee of Wal-Mart Stores, Inc. v. Varco, 338 F.3d 680 (7th Cir. 2003), Mid Atlantic Medical Services v. Sereboff, 407 F.3d 212 (4th Cir. 2005), Bombardier Aerospace Employee Welfare Benefits Plan v. Ferrer, Poirot and Wansbrough, 2003 WL 22961221 (5th Cir.), Administrative Committee of the Wal-Mart Associates Health and Welfare

Sereboff v. Mid Atlantic Medical Services, Inc., 126 S.Ct. 1869 (2006)

Facts:

- The ERISA Plan included a reimbursement provision that applies when a beneficiary is sick or injured as a result of the act or omission of another person or party and requires a beneficiary who receives benefits under



the plan for such injuries to reimburse the plan for those benefits from all recoveries from a third party.

- The claimants filed a tort action in state court against several third parties seeking compensatory damages for injuries suffered as a result of the accident. The Plan sent their attorney a letter asserting a lien on the anticipated proceeds from the suit for medical expenses paid on behalf of the claimants. The personal injury suit settled for \$750,000.00.
- The ERISA Plan filed suit in District Court under § 502(a)(3) of ERISA, seeking to collect the medical expenses it had paid. Since the personal injury attorney had already disbursed the settlement proceeds to the claimants, the Plan sought a temporary restraining order and preliminary injunction requiring the claimants to set aside the amount the Plan had paid for their medical expenses from the proceeds. The District Court approved a stipulation by the parties under which the claimants agreed to preserve that amount of the settlement proceeds in an investment account.

Outcome:

- Judgment for the ERISA plan. An appropriate equitable remedy may be an “equitable lien by agreement”.
- The “Acts of Third Parties” provision in the Plan specifically identified a particular fund, distinct from the plan beneficiaries’ general assets— “[a]ll recoveries from a third party (whether by lawsuit, settlement, or otherwise)” —and a particular share of that fund to which the ERISA plan was entitled— “that portion of the total recovery which is due [the Plan] for benefits paid.” Thus, the ERISA plan could “follow” a portion of the recovery into the plan beneficiaries’ hands as soon as the settlement fund was “identified,” and impose on that portion a constructive trust or equitable lien.

US Airways, Inc. v. McCutchen, 133 S.Ct. 1537 (U.S. Apr. 16, 2013)

Facts:

- The ERISA plan paid \$66,866 in medical expenses for injuries suffered by claimant in a car accident caused by a third party. The Plan asserted a



reimbursement claim based upon language in its summary plan description. Claimant's attorneys secured \$110,000 in payments, and claimant received \$66,000 after deducting the lawyers' 40% contingency fee. The Plan demanded reimbursement of the full \$66,866 it had paid.

- When claimant did not comply, the Plan filed suit under § 502(a)(3) of ERISA. Claimant raised two defenses to the Plan's request for an equitable lien on the \$66,866 it demanded: (1.) absent over-recovery on his part, the Plan's right to reimbursement did not kick in; and (2.) the Plan had to contribute its fair share to the costs he incurred to get his recovery, so any reimbursement had to be reduced by 40%, to cover the contingency fee. Rejecting both arguments, the District Court granted summary judgment to the Plan.
- The Third Circuit vacated. Reasoning that traditional "equitable doctrines and defenses" applied to § 502(a)(3) suits, it held that the principle of unjust enrichment overrode the Plan's reimbursement clause because the clause would leave claimant with less than full payment for his medical bills and would give the Plan a windfall.

Outcome:

The U.S. Supreme Court unanimously agreed to vacate the Third Circuit ruling and held that:

- "In a § 502(a)(3) action based on an equitable lien by agreement— like this one—the ERISA plan's terms govern. Neither general unjust enrichment principles nor specific doctrines reflecting those principles— such as the double-recovery or common-fund rulescan override the applicable contract."
- While equitable rules cannot trump a reimbursement provision, they may aid in properly construing it. The US Airways Plan was silent on the allocation of attorney's fees, and the common-fund doctrine provides the appropriate default rule to fill that gap.

Montanile v. Board of Trustees of Nat. Elevator Industry Health Benefit Plan, 136 S. Ct. 651 (2016)

Facts:



- Montanile was a participant in an ERISA-governed health plan. He was injured in a car accident involving a drunk driver. The Plan paid Montanile's initial medical expenses of \$121,044.02. Montanile pursued an action against the driver of the other car and obtained a \$500,000.00 settlement from the other driver. Montanile paid his attorneys a \$200,000.00 contingency fee and \$63,788.48 to reimburse out-of-pocket expenses. After Montanile accepted the settlement, the Plan and Montanile through counsel, attempted to negotiate a resolution. After being unable to reach an amicable resolution, the Plan filed suit to enforce the Plan's reimbursement provision. Montanile argued that the Plan could not impose an equitable lien on the settlement funds because he had already spent the money.

Procedural Background:

- The District Court rejected Montanile's argument and granted the Plan's motion for summary judgment awarding the Plan the full lien amount. The Court of Appeals for the 11th Circuit affirmed, allowing the Plan to seek reimbursement of the benefits it paid to Montanile, even though Montanile had already spent the funds.

Outcome:

On January 20, 2016, the U.S. Supreme Court reversed the judgment of the Eleventh Circuit and remanded the case to the District Court to determine whether Montanile kept his settlement funds separate from his general assets and whether he had dissipated the settlement on non- traceable items.

- In an 8-1 opinion, written by Justice Thomas, the U.S. Supreme Court held that an ERISA Plan may not attach the separate assets of a plan participant who spends his settlement funds on items that are not traceable (e.g. bills, travel, food).
- The Court reasoned that under these circumstances, the relief that the Plan is seeking is no longer equitable.
- An equitable lien can only be enforced against specifically identifiable funds that remain in the defendant's possession or against traceable items that the defendant purchased with the funds (e.g. a car or house).
- The spending of the personal injury proceeds on non- traceable items like food or travel destroys the equitable lien and recovering from the



defendant's general assets is a legal remedy. Legal remedies are not available under section 502(a)(3) of ERISA.



Program Transcript

The following is a computer generated voice recognition transcript of the video presentation. This is an automatically generated transcript and not a verbatim transcript of the program. This is provided only for general reference and there may be portions that have not been accurately computer generated. If there are any inconsistencies, please refer to the video for clarification.

Resources

Resources Specific to this Course

In addition, please see the resources cited within the material.

Resources for the Legal Professional

ABA Center for Professional Responsibility - www.abanet.org/cpr

Chicago Bar Association - www.chicagobar.org

Commission on Professionalism - www.2civility.org

Judicial Inquiry Board - <http://www.illinois.gov/jib>

Illinois Board of Admissions to the Bar - www.ilbaradmissions.org

Illinois Department of Financial and Professional Regulation - www.idfpr.com/default.asp

Illinois Lawyers' Assistance Program, Inc - www.illinoislap.org

Illinois State Bar Association - www.isba.org

Illinois Supreme Court - www.state.il.us/court

Lawyers Trust Fund of Illinois - www.ltf.org

MCLE Program - www.mcleboard.org



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