

Supreme Court: ERISA Plan Cannot Recover Settlement Funds that Have Already Been Spent

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The U.S. Supreme Court has narrowed, ever so slightly, the ever-changing definition of “appropriate equitable relief” under ERISA Section 502(a)(3). In *Montanile v. Board of Trustees of National Elevator Industry Health Benefit Plan*, the high court addressed whether a plan fiduciary can recover medical payments made on behalf of a participant when the plan fiduciary has not identified the precise funds in the participant’s possession *at the time of the claim*. The Supreme Court held in an 8-1 ruling that when a plan participant has spent all the settlement proceeds that could have been used to reimburse the plan, the plan fiduciary may not reach the participant’s other assets as a broader means of recovery. No. 14-723 (Jan. 20, 2016).

Background

The facts of *Montanile* were mostly undisputed by the parties. (*Board of Trustees of National Elevator Industry Health Benefit Plan v. Robert Montanile*, No. 12-80746, 2014 U.S. Dist. LEXIS 36309, at *5 (S.D. Fla. March 17, 2014).) The plaintiff, the Board of Trustees of the National Elevator Industry Health Benefit Plan (the “Plan”), is an “employee welfare benefit plan,” which reserved for itself, in its summary plan description (“SPD”), “a right to first reimbursement out of any recovery.” Robert Montanile, a plan participant, was injured in a car accident, and the Plan paid out \$121,044.02 in medical expenses on his behalf.

Meanwhile, Montanile retained counsel to pursue personal injury damages and ultimately settled for \$500,000. When the Plan attempted to enforce its right to reimbursement, negotiations with Montanile’s counsel broke down, and Montanile’s attorney informed the Board that he would distribute the remaining settlement funds to Montanile unless the Board objected within 14 days. The Board did not respond within that time, so Montanile’s attorney gave Montanile the remainder of the funds. The Board then waited six months before it sued under Section 502(a)(3)(B) of ERISA to enforce an equitable lien on any settlement funds, during which time Montanile spent most of the money.

The district court addressed two distinct legal issues: 1) whether the SPD created an enforceable right to reimbursement; and 2) whether such reimbursement was “appropriate equitable relief” under ERISA. The district court found plenty of authority to show that the SPD’s reimbursement provision was enforceable. The second issue, however, led the district court into a circuitous exploration of the U.S. Supreme Court’s prior decisions addressing “appropriate equitable relief,” in which the Supreme Court has clearly held that money judgments sought from comingled assets are not equitable in nature (*Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204 (2002)) unless the claim targets a constructive trust or specifically identified fund (*Sereboff v. Mid Atlantic Medical Services, Inc.*, 547 U.S. 356 (2006)).

The district court in *Montanile* was facing a situation where the Plan was seeking restitution that could theoretically expose Montanile’s general assets because the money earmarked for medical expenses was either spent or comingled by Montanile by the time the Board filed suit. While conceding the lack of Eleventh Circuit authority on point, the district court found the Plan had a right to reimbursement on the grounds that “a beneficiary’s dissipation of assets is immaterial when a fiduciary asserts an equitable lien by agreement.”

The Eleventh Circuit easily affirmed the decision (593 Fed. App’x 903, 907 (11th Cir. 2014)), relying on its recent holding in *AirTran Airways, Inc. v. Elem*, 767 F.3d 1192 (11th Cir. 2014).

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(In a curious case of *certiorari* leapfrog, however, Airtran's petition is still pending before the Supreme Court and will likely be denied based on the *Montanile* decision. The Supreme Court most likely chose to decide *Montanile* instead of *AirTran* because to address the issue of dissipated, third-party settlement funds without getting mired in AirTran's peculiar facts.)

In *AirTran*, as in *Montanile*, the plan participant was in a car accident, and the employer-sponsored plan asserted its right to reimbursement for medical care expenses. In *AirTran*, however, there were two important differences. First, Airtran's plan explicitly imposed a constructive trust on the medical expenses paid in a settlement, vesting the participant with the responsibility of tracking the funds to maintain the plan's subrogation rights. Second, the participant tried to conceal the full amount of her settlement, then argued that she never "controlled" the monies paid to her attorneys, who were also defendants in the case. The Eleventh Circuit characterized the participant's argument succinctly: "Nonsense." The *AirTran* court held that "settlement funds were 'specifically identifiable,' and a plan participant's dissipation of the funds thus 'could not destroy the lien that attached before' the dissipation."

The Decision

In the Supreme Court's review of *Montanile*, the debate focused on whether spending the settlement funds can destroy the enforcement of a lien. Indeed, the U.S. Solicitor General argued for the participant that the pursuit of a "deficiency" judgment against dissipated funds looked more like traditional damages at law than the sort of equitable relief available under Section 502(a)(3) of ERISA. In response, the Plan argued, not surprisingly, that a claim for money damages against general assets can operate like a replevin and is, therefore, equitable in nature. In other words, the parties were fighting over the age-old question of how to define "equity." While the ultimate decision in *Montanile* hardly offers a working definition, the Supreme Court explicitly reaffirmed its earlier decisions addressing suits in which plan fiduciaries sought reimbursement for paid medical expenses.

Justice Clarence Thomas, writing for the majority, explained that claims for restitution must be clearly traceable to particular funds or property in the defendant's possession (referencing *Knudson*) and that the plan can create and enforce an equitable lien over settlement funds to satisfy the tracing requirement (as in *Sereboff* and *US Airways, Inc. v. McCutchen*, 133 S.Ct. 1537 (2013)). Rejecting the Plan's argument that ERISA's general objectives and fairness justify a recoupment under these circumstances, Justice Thomas clarified that enforcing an equitable lien over a participant's *general* assets is not "typically available" relief under the principles of equity. The majority remanded the case to the district court to determine "how much dissipation there was" and whether *Montanile* mixed the settlement fund with his general assets. So, there is still some hope of recovery by the Plan.

Dissent

Justice Ruth Bader Ginsburg's one-paragraph dissent underscores exactly what the Court did *not* do here, which is to allow a pure claim for money damages under ERISA's equitable remedies provision. In an ironic twist, Justice Ginsburg's continued support of expanding remedies available under Section 502(a)(3) of ERISA for plaintiffs put her in the unique position of arguing for the Plan. Citing *Knudson*, she accused the majority of "unraveling forty years of fusion of law and equity", allowing *Montanile* to rapidly spend his settlement funds to avoid his reimbursement obligations.

From that public policy and legal theory perspective, the broad question put to the Court in *Montanile* (what is "appropriate equitable relief?") was unlikely to spawn a new "tracing" rule for all types of reimbursement claims. Instead, *Montanile* demonstrates that all, but one, of the justices are unwilling to turn ERISA Section 502(a)(3) into a damages free-for-all. At the end of decision, Justice Thomas explains that the Plan should have acted more expeditiously to secure settlement proceeds before they were dissipated. That statement is the complete scope of *Montanile*: the equitable tracing rules for plan reimbursement remain in place, but plans need to follow them in a timely manner.

What Does the *Montanile* Decision Mean to Plan Fiduciaries?

A narrow decision of this nature has two important practical impacts for plan drafters and fiduciaries. First, SPDs should include language that puts participants on notice of the plan's reimbursement rights in the case of a tort recovery, and shifts the burden to plan participants to guard medical settlement funds. Second, plan fiduciaries must anticipate the need to enforce and monitor the plan's subrogation rights when plan assets are paid out in relation to cases of personal injury. In *AirTran*, for example, the plan learned of the defendants' full recovery (\$425,000, instead of \$25,000) by accident, when the defendants put a copy of the wrong check in the mail. It is incumbent upon plans to communicate with all parties in a tort suit, calendar important deadlines, and consult with outside counsel when third-party settlement funds are potentially on the horizon.

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