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### **U.S. SUPREME COURT:**

#### ***ERISA PLAN NOT ENTITLED TO SEEK REIMBURSEMENT FROM PARTICIPANT'S GENERAL ASSETS UNDER PLAN SUBROGATION PROVISIONS***

In 2008, a participant in a health benefit plan governed by ERISA and administered by the Board of Trustees of the National Elevator Industry Health Benefit Plan was injured in a car accident. Pursuant to the terms of the plan, the plan administrator paid a portion of the participant's medical care as he was recovering from the accident.

The plan included a subrogation clause requiring the participant to reimburse the plan in the event the participant later recovered money from a third party for medical expenses. The injured plan participant also signed a reimbursement agreement reaffirming his obligation to reimburse the plan from any recovery he obtained as a result of a legal action or settlement. Thereafter, the plan participant brought a lawsuit and obtained a settlement which, following deductions, amounted to sufficient funds to repay the plan. However, following a breakdown in communications over the amount to be repaid, the attorney for the plan participant distributed the remaining settlement funds to his client. During the six months it took for the plan administrator to bring suit, the participant spent most of the settlement funds on non-traceable items such as food and services.<sup>1</sup>

The plan administrator brought suit under ERISA §502(a)(3), 29 U.S.C. §1132(a), seeking repayment of the money provided to the injured plan participant. This section allows plan fiduciaries to file civil suits "to obtain . . . appropriate equitable relief . . . to enforce the terms of the plan."<sup>2</sup> The plan administrator requested the court to enforce an equitable lien upon any settlement funds. Finding that there were insufficient funds remaining from the settlement monies, the district court held that the plan administrator was entitled to reimbursement from the plan participant's general assets. The Eleventh Circuit affirmed, reasoning that the underlying reimbursement obligation was not affected by the dissipation of the actual settlement monies by the plan participant.

On January 20, 2016, the United States Supreme Court reversed, holding that under these circumstances Section 502(a)(3) does not allow a plan fiduciary to attach a plan participant's separate assets in order to obtain reimbursement. Therefore, the plan administrator was left only to seek reimbursement from identifiable settlement proceeds that might still be in the possession of the plan participant.

The Court began its analysis by noting that the equitable relief afforded by Section 502(a)(3) is limited to those categories of equitable relief available prior to the merger of law and equity courts (i.e., 1938). Because an equitable lien can be typically enforced only "against specifically identifiable funds that remain in the defendant's possession or against traceable items that defendant purchased with the funds," the plan administrator was likewise limited to that recovery.<sup>3</sup> Monies spent on non-traceable items—such as food, services or travel and leisure—destroy an equitable lien.

The Court also disposed of the plan administrator's claim that it could enforce an equitable lien against the plan participant's general assets, even an equitable lien by agreement, where the plan participant's own actions destroyed the ability to recover. Noting that the law in this area was set, the Court indicated that ERISA did not change the application of this law simply because the parties were an ERISA plan and a plan participant. As such, the plan

administrator was without an equitable remedy to obtain recovery unless identifiable settlement funds could be located. Moreover, the Court noted in passing that any personal claim against the plan participant—say, for breach of contract—would be a legal claim not enforceable by the provisions of Section 502(a)(3).

Where, as here, the plan administrator allowed the settlement funds to be distributed to the plan participant and did not act with sufficient speed to secure an injunction to prevent the funds from being spent, the plan was left without an equitable remedy to obtain reimbursement.

~ By Aaron W. Tandy, Pathman Lewis, LLP

#### Endnotes

- 1 *Montanile v. Bd. of Trustees of the Nat'l Elevator Ind. Health Benefit Plan*, 577 U.S. \_\_\_, Slip. Op. at 2-3 (U.S. Jan. 20, 2016).
- 2 *Id.*, Slip. Op. at 1.
- 3 *Id.*, Slip. Op. at 8.

## 2016 SEMINARS & MEETINGS

- |                     |   |
|---------------------|---|
| January 26, 2016    | <del>White Collar Exemptions Update (2007R)</del><br>(audio webcast by David Spalter)<br>Postponed until Fall 2016 when new regulations will be available.  |
| January 28-29, 2016 | <b>16<sup>th</sup> Annual Labor and Employment Law Certification Review (2024R)</b><br>Loews Royal Pacific Resort,<br>6300 Hollywood Way, Orlando<br>Reservation Number: (866) 360-7395                                   |
| January 28, 2016    | <b>Labor Executive Council Meeting, 5:00 p.m.</b>   |
| February 9, 2016    | <b>Attorneys' Obligations in the Techno Age (2008R)</b><br>(audio webcast by Robert Turk)   |
| March 8, 2016       | <b>Policy and Handbook Update – Data Ownership, Phones, LinkedIn and Facebook – Practical Tips for Evolving Issues (2009R)</b><br>(audio webcast by Lindsey Wagner)   |
| April 1, 2016       | <b>Practicing Before State Agencies (2042R)</b><br>University Center Club, Tallahassee  |
| April/May 2016      | <b>Long Range Planning Retreat</b>  |
| May 6-7, 2016       | <b>Advanced Labor Topics 2015 (2047R)</b><br>Ritz Carlton Amelia Island, 4750 Amelia Island Parkway,<br>Amelia Island, Florida 32034<br>Group Rate: \$239 / Expires: April 14, 2016<br>Reservation Number: (888) 239-1217 |
| May 6, 2016         | <b>Labor Executive Council Meeting, 5:00 p.m.</b>   |
| June 16, 2016       | <b>Labor Annual Executive Council Annual Meeting, 5:00 p.m.</b><br>The Florida Bar Annual Convention,<br>Hilton Bonnet Creek, Orlando   |





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