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# Which Way Did Our Money Go? Supreme Court Decides ERISA Subrogation Issue

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On January 20, 2016, the Supreme Court of the United States addressed the first of several ERISA-related cases on its October 2015 docket, reversing the Eleventh Circuit Court of Appeals and concluding that the trustees of the National Elevator Industry Health Benefit Plan were a day late and dollar (or more) short in their attempts to secure reimbursement for benefits provided to a participant who was injured in an automobile accident. In *Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan*, the Court ventured back to a topic—subrogation and reimbursement—with which it has wrestled several times in the past to resolve a question that remarkably had been left unanswered in prior decisions: whether a health plan can be reimbursed for benefits provided to a plan participant where the participant has recovered from a third party *and* spent the settlement proceeds on "nontraceable items" (i.e., services or consumables).

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Employee Retirement Income Security Act (ERISA) of 1974, concluding that even when the basis of a plan's reimbursement claim is equitable *and* the plan participant has wrongfully dissipated settlement proceeds to which the plan is entitled as a matter of equity, the plan fiduciaries may not glom onto the participant's general assets to make the plan whole. The Court's reasoning in *Montanile* is straightforward enough in light of its prior ERISA subrogation and reimbursement cases, but it has some important implications for health plan fiduciaries as discussed below.

*Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan*, No.14-723, Supreme Court of the United States (January 20, 2016).

## Background

The Board of Trustees of the National Elevator Industry Health Benefit Plan administered a health benefit plan in which Robert Montanile was a participant. As is typically the case, the plan, which was governed by ERISA, contained a clause requiring plan participants to reimburse the plan for medical expenses the plan had paid on the participant's behalf if the participant later recovered money from a third party for his or her injuries "without reduction for attorneys' fees." In addition, the plan required participants to notify the plan and obtain its consent before settling claims.

When Montanile was injured in a vehicle accident, the plan paid at least $121,044.02 for his initial medical care. Montanile then signed a reimbursement agreement reaffirming his obligation to reimburse the plan from any recovery he obtained through a settlement. Subsequently, Montanile sued the other party involved in the accident and obtained a settlement of $500,000. After Montanile had paid his attorneys, $240,000 in settlement funds remained. Notably, the remaining settlement proceeds were initially segregated in his attorneys' trust account.

After learning about the settlement, the Board of Trustees sought reimbursement from Montanile on behalf of the plan but initially through informal means rather than litigation. In response, Montanile's attorney argued that the plan was not entitled to a recovery, despite reasonably clear plan terms and Montanile's affirmation of his understanding of them. After negotiations between the parties failed to reach an agreement, Montanile's attorney notified the Board of Trustees that unless it objected within 14 days, he would distribute the remaining settlement funds to Montanile. The Board of Trustees did not respond and Montanile's attorney distributed the funds to him.

About six months after Montanile received the balance of his settlement proceeds—and, apparently, spent a sizable portion of it—the Board of Trustees finally filed suit in federal court seeking repayment of the amounts it had expended on Montanile's medical care. In keeping with prior Court decisions dealing with ERISA's remedial provisions, the Board of Trustees asked the Court to enforce an "equitable lien by agreement" on the settlement funds or any property in Montanile's "actual or constructive possession." The Board of Trustees also sought an order enjoining Montanile from dissipating the settlement funds. In response, Montanile argued that because he had spent almost all of the settlement funds, the Board of Trustees' equitable lien could not be enforced. The district court ruled that the Board was entitled to reimbursement from Montanile's general assets.

On appeal, the Eleventh Circuit Court of Appeals affirmed, concluding that the plan's equitable lien *did* attach to Montanile's general assets and that his dissipation of the settlement proceeds did not extinguish the plan's lien or Montanile's underlying reimbursement obligation. The Supreme Court agreed to review the case to resolve a conflict among the circuit courts over whether an ERISA fiduciary may enforce an equitable lien by agreement against a plan participant's general assets.

**The Supreme Court's Decision**

In its prior cases dealing with subrogation and reimbursement rights under ERISA plans, the Court has concluded that ERISA's remedial scheme allows only for the types of relief that were "typically" available in courts of equity (e.g., injunctions, restitution, mandamus, etc.) but not money damages or their equivalent. In addition, the Court has approved reimbursement claims where the plan sought recovery against segregated and identifiable assets held by the participant through a so-called "equitable lien by agreement". In some of these cases, the participant left empty-handed (or worse) while in others, the plan fiduciaries found themselves with unenforceable subrogation and reimbursement rights due to the application of dusty legal technicalities resurrected from the English common law. In *Montanile*, the Court was forced to reckon with the boundary between the relief that would arguably be equitable in the circumstances (e.g., reimbursement to make the plan whole, as Montanile had agreed to do) but that was nonetheless prohibited as "legal" in character or reinforce the limits on ERISA's remedial scheme, effectively at the plan's expense. Ultimately, the Court concluded that while the plan's reimbursement claims were equitable in nature—and therefore permissible under ERISA—the relief sought by the plan was effectively legal in nature since the settlement proceeds had largely been dissipated. According to the Court, the equitable remedies it had previously approved were directed at some specific *thing*—a segregated pool of assets, for example. In contrast, the plan sought reimbursement through a lien against Montanile's general assets, amounts that concededly had no connection to the plan or the settlement proceeds. In the Court's view, by the time the case made its way to the courts, the plan had only a personal claim against Montanile, a "quintessential action at law" that fell outside of the scope of ERISA's remedial scheme.

Justice Thomas's opinion was joined by all of the other justices, with the exception of Justice Ginsburg who instead advocated for a judicial "confession of error" regarding the Court's 2002 decision concerning the nature of equitable relief and Justice Alito who opted out of a key discussion in the majority's opinion. Specifically, Justice Ginsburg—and perhaps Justice Alito as well—was concerned that the Court's strict application of the 2002 case created a perverse incentive for individuals in Montanile's situation to spend their third-party settlement proceeds as quickly as possible on nontraceable items before plan fiduciaries could take action to enforce the plan's reimbursement rights. As discussed below, this is not an idle concern for plan fiduciaries.

In addition to reversing the Eleventh Circuit's decision, the Court remanded the case to the district court to determine whether Montanile had in fact spent all or most of the settlement proceeds. Presumably, if Montanile still retains traceable settlement proceeds, the plan will be able to secure partial recovery as equitable relief under ERISA.

## Practical Impact

Although the outcome of the case may seem unfair to the plan, the Court's reasoning in *Montanile* represents a fairly straightforward application of its prior decisions dealing with subrogation and reimbursement rights in the ERISA context. Justice Ginsburg's brief dissent may well have contained the keenest insight into the practical effects of *Montanile* for plan participants who recover from third-parties: spend like there is no tomorrow. For plan fiduciaries, however, *Montanile* is a warning. The majority noted with interest that the Board effectively sat on its rights when informed of the impending release of settlement proceeds to Montanile: the Board of Trustees was given 14 days to object but took no action. Further, the Board delayed commencement of its suit for over six months after Montanile received the settlement proceeds. The majority noted both of these delays with interest, suggesting that the fault for having left the courthouse empty-handed rested with the Board of Trustees itself rather than with Montanile.

From this, one might take the lesson that diligence by plan fiduciaries is the real solution to the problem presented by the free-spending participant. However, in most cases involving third-party settlements—and these cases are legion—the plan fiduciaries will often remain in the dark about settlement negotiations and agreements. Tort lawyers and their participant-clients are often not anxious to keep plan fiduciaries apprised of developments involving third-party settlements, and even diligent plan fiduciaries will not become aware that a settlement has been reached or amounts paid until well after the fact and, under the reasoning in *Montanile*, after it is far too late to recover. The incentives created by *Montanile* may even prompt health plans and health insurers to proceed more deliberately when considering claims involving injuries caused by third parties than they otherwise might have done so as to mitigate the risks of overpaying claims, an outcome that would obviously not benefit health plan participants.


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