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Insight — 5/24/2006 12:00:00 AM

On May 15, 2006, the Supreme Court issued a unanimous decision that strengthens a plan fiduciary's ability to recover amounts paid to a plan participant from a non-plan source. In contrast to the earlier case of *Great West v. Knudson*, the Court permitted the plan to recover from a third party source in the case of *Sereboff v. Mid Atl. Med. Servs. Inc.* Plan sponsors should review the language in their medical plans and the actions they take in seeking recovery of amounts paid to participants outside the plan to make sure that the plan takes full advantage of the *Sereboff* decision.

Although it had opined on the matter before in a split decision under *Great-West v. Knudson*, the Supreme Court again faced the question of defining "equitable relief" for ERISA purposes in *Sereboff v. Mid Atl. Med. Servs. Inc.*

Most medical benefit plans include a provision regarding third-party payments to plan beneficiaries. If a plan pays medical benefits to a participant, who then sues a third party and recovers money damages for those same medical expenses, the plan provides that it may pursue reimbursement from the participant of the medical expenses paid by the plan. Since ERISA exclusively governs the enforcement of the terms of most medical benefit plans, including enforcement of a third party recovery provision, any action by a plan to recover third party monies from a participant must be permitted by ERISA. Permission for action of this sort is found in § 502(a)(3) of ERISA, which allows a fiduciary to sue to "to obtain...appropriate *equitable* relief...to enforce...the terms of the plan." In ERISA cases regarding third-party recoveries, a crucial dispute is often whether the particular reimbursement sought by a plan fiduciary is appropriately characterized as "equitable." If not, § 503(a)(3) would not permit reimbursement.

Relief in equity is a legal concept which dates back centuries, when courts had "legal" and "equitable" divisions. In simple terms, the "legal" division could grant general money damages relief, while the "equitable" division was confined to ordering particularized remedies, such as the return to a plaintiff of specific property. Thus for ERISA purposes today, a court may allow a fiduciary to enforce a third party recovery provision in a plan only so long as the desired relief was of a type that had been available in traditional courts of equity.

In the *Sereboff* case, Mr. and Mrs. Sereboff were injured in a car accident,

sued, and obtained a \$750,000 settlement from another party. The Mid-Atlantic medical plan had in the meantime paid \$75,000 of the Sereboff's medical expenses. The plan sent several letters to the Sereboff's attorney, asserting a right to \$75,000 worth of any recovery obtained, based on plan language which required a participant to reimburse the plan from any third party recovery. Mid-Atlantic sought a preliminary injunction requiring the Sereboffs to put aside \$75,000 in a specific account, pending resolution of the case. They agreed to do so. Mid-Atlantic then sought enforcement of the plan's third party recovery provision as to that \$75,000 account.

In deciding whether such a request was appropriately "equitable," the Supreme Court reviewed several older cases from the 1800's and early 1900's. In traditional courts of equity, specifically identifiable property in the possession of one party could be ordered transferred to another party, if the other party could show a right to it. The asserted right to such property was often referred to as a lien. In similar fashion, Mid-Atlantic here was asserting a lien on the Sereboff's \$75,000 account pursuant to the plan's third party recovery provisions. The Supreme Court unanimously agreed that the ability to grant such a request was founded in a court's traditional equity power, and thus enforceable under ERISA.

If Mid-Atlantic had simply sued the Sereboffs for \$75,000 in money damages, the outcome would have been different. No specific account in the Sereboff's possession would have been at issue. The request would have merely been for general legal relief, and, since there is no right to sue for general legal relief under ERISA, Mid-Atlantic would have been out of luck.

The lesson for plans seeking recovery: (1) provide specific procedures for recovery in the plan document, (2) pursue specifically identifiable judgment or settlement proceeds, and (3) sue early for an injunction or temporary restraining order to assure that funds are not prematurely spent or disbursed before a lien on them can be perfected.

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