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## U.S. Supreme Court Upholds Medical Plan's Right to Reimbursement

In a very favorable decision for ERISA-covered employee benefit welfare plans, the U.S. Supreme Court has unanimously ruled that a fiduciary may properly seek reimbursement from a participant or beneficiary under a plan's appropriately worded third-party reimbursement provision. *Sereboff v. Mid Atlantic Med. Servs., Inc.*, No. 05-260 (U.S. May 15, 2006). This decision resolves a split among the federal courts of appeal regarding the nature of the remedy such reimbursement claims seek. The distinction between a remedy as "equitable" (and thus recoverable under Section 502(a)(3) of ERISA) or as "compensatory" (and thus not recoverable under that section) remains complex, and the Supreme Court's earlier decision in a similar third-party reimbursement case, *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204 (2002) left that issue open. The *Sereboff* decision clarifies the plan language and the circumstances under which a benefit plan can recover third-party payments made to participants or beneficiaries; therefore, it should prompt employers to review plan language carefully to ensure that the terms meet the "identifiable fund" standard.

### Background

In this case, Marlene Sereboff and her spouse were covered by a health plan ("plan") sponsored by her employer and administered by Mid Atlantic Medical Services, Inc. ("Mid Atlantic"). After they were injured in an automobile accident, they submitted claims for medical benefits totaling almost \$75,000, which Mid Atlantic paid on behalf of the plan. The plan's "Acts of Third Parties" provision applied when a participant was injured or became sick as a result of the actions of a third party. Under that provision, participants who received benefits from the plan were required to reimburse the plan from any amounts they recovered from the third party who had caused the injury or sickness.

The Sereboffs sued in state court for damages for injuries suffered in the accident and ultimately settled for \$750,000. During the pendency of the suit, Mid Atlantic, a plan fiduciary, sent several letters asserting the plan's lien against any

recovery, then filed suit in federal court seeking reimbursement of the medical benefits it had paid to the Sereboffs. The Sereboffs agreed to set funds aside pending a decision in the case. The District Court ordered the Sereboffs to reimburse the plan and the Sereboffs appealed.

### Disagreement among the Circuits

On appeal, the Fourth Circuit joined the Fifth, Seventh and Tenth Circuits in agreeing that the claim and remedy sought were equitable in nature because the plan sought to recover funds that were specifically identifiable, belonged in good conscience to the plan, and were within the possession of the beneficiaries. The Sixth and Ninth Circuits, however, had reached opposite conclusions, holding that such third-party reimbursement suits seek money damages, a form of relief not traditionally available in equity.

### A Unanimous Decision in favor of ERISA Plans

In aligning itself with the majority of the circuit courts, the Supreme Court distinguished its prior decision in *Great-West v. Knudson* on its facts. *Great-West* involved a plan participant who had settled her claim against a third party, and the settlement proceeds were placed in a "special needs trust" beyond the control of the participant. *Great-West* filed a claim for "equitable restitution" to recover an amount equal to the medical benefits paid by the plan. Analyzing the forms of relief available in courts of equity, the Supreme Court found that, in order to seek "equitable relief," the claim for restitution must seek to impose a constructive trust or equitable lien on "particular funds or property in the defendant's possession." Because the settlement proceeds were not in the participant's possession, equitable restitution was not available.

In *Sereboff*, by contrast, Mid Atlantic sought "equitable relief" on behalf of the plan, and the funds Mid Atlantic claimed were specifically identifiable funds within the possession and control of the beneficiaries. Thus, the "impediment to characterizing the relief as equitable" in *Knudson* was not present in *Sereboff*. The Supreme Court found that

Mid Atlantic could rely upon a rule of equity discussed in its decision in *Barnes v. Alexander*, 232 U.S. 117 (1914), and treated Mid Atlantic's claim as akin to one to enforce an equitable lien established by agreement. Under this "familiar rule of equity," because the plan had identified a particular fund (all recoveries from a third party whether by lawsuit, settlement or otherwise) and a particular share of that fund to which it was entitled (that portion of the third party recovery which is due the plan for benefits paid), the fund over which the lien was asserted did not have to exist when the contract was formed. Therefore, the plan could follow the settlement proceeds into the Sereboffs' hands and impose an equitable lien.

### Potential Impact for Plans

Third-party reimbursement provisions such as the provision in issue in *Sereboff* are commonly included in single-employer and multi-employer group health plans. The ability to enforce third-party reimbursement provisions can have a significant impact on employers and employees that participate in such plans. Plan sponsors should review their health plans to ensure that the plans contain appropriate "Acts of Third Parties" language, including language that identifies a particular fund (*i.e.*, all recoveries from a third party whether by lawsuit, settlement or otherwise) and share of that fund (*i.e.*, that portion of the recovery which is due the plan for benefits paid) to which the plan will be entitled. Based on this decision, the language in any employee welfare benefit plan and summary plan description is critical to successful recovery for acts of third parties. As plan sponsors, employers should immediately review and, if necessary, revise these documents to permit such recovery.

Plan administrators, whether an employer or a third party administrator, should put procedures in place to identify and track claims that may involve acts of third parties and to ensure timely assertion of liens on the anticipated proceeds of any third-party litigation.

Fiduciaries should keep in mind, however, that the duty of prudence requires a thoughtful analysis of whether the plan should pursue a particular reimbursement claim, taking into account the amount of the lien involved, the potential costs of the lawsuit, the importance and benefit of consistent long-term enforcement of plan terms, and the likelihood of success on the merits.

*For further details and guidance regarding third-party reimbursement provisions for health plans, please do not hesitate to contact your Seyfarth Shaw LLP attorney or contact any Employee Benefits attorney on the website at [www.seyfarth.com](http://www.seyfarth.com).*

#### ATLANTA

One Peachtree Pointe  
1545 Peachtree Street, N.E., Suite 700  
Atlanta, Georgia 30309-2401  
404-885-1500  
404-892-7056 fax

#### BOSTON

Two Seaport Lane, Suite 300  
Boston, Massachusetts 02210-2028  
617-946-4800  
617-946-4801 fax

#### CHICAGO

55 East Monroe Street, Suite 4200  
Chicago, Illinois 60603-5803  
312-346-8000  
312-269-8869 fax

#### HOUSTON

700 Louisiana Street, Suite 3700  
Houston, Texas 77002-2797  
713-225-2300  
713-225-2340 fax

#### LOS ANGELES

One Century Plaza  
2029 Century Park East, Suite 3300  
Los Angeles, California 90067-3063  
310-277-7200  
310-201-5219 fax

#### NEW YORK

1270 Avenue of the Americas, Suite 2500  
New York, New York 10020-1801  
212-218-5500  
212-218-5526 fax

#### SACRAMENTO

400 Capitol Mall, Suite 2350  
Sacramento, California 95814-4428  
916-448-0159  
916-558-4839 fax

#### SAN FRANCISCO

560 Mission Street, Suite 3100  
San Francisco, California 94105-2930  
415-397-2823  
415-397-8549 fax

#### WASHINGTON, D.C.

815 Connecticut Avenue, N.W., Suite 500  
Washington, D.C. 20006-4004  
202-463-2400  
202-828-5393 fax

#### BRUSSELS

Boulevard du Souverain 280  
1160 Brussels, Belgium  
(32)(2)647.60.25  
(32)(2)640.70.71 fax

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