Category: ERISA and No-Fault

A New Frontier in the Wild West of ERISA Litigation

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It is often said that United States Supreme Court ("SCOTUS") is the Super Bowl of law. But with all the glamor surrounding SCOTUS, we often forget that the Court also decides technical, arcane legal questions. Sometimes those decisions have a significant impact on the day-to-day practice of law.

Such was the case in January 2016, when SCOTUS issued its opinion in *Montanile v. Board of Trustees of the National Elevator Industry Health Plan*, 577 U.S. __ (2016). *Montanile* dealt with the issue of medical expenses paid by a health plan under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA health plans are notorious in personal injury litigation. Simply put, federal law gives ERISA plans the right to seek claims for reimbursement against an injured person's tort liability claim for medical expenses that the plan paid. An ERISA plan's enforcement of this right can thus have a substantial effect on what an injured person ultimately receives from a personal injury settlement.

In *Montanile*, the plaintiff was injured by a drunk driver. The plaintiff's ERISA plan paid approximately $121,000 in medical expenses. The plaintiff settled his liability claim against the drunk driver's insurance company for $500,000. After paying his attorney fees, the plaintiff was left with approximately $240,000. The ERISA plan sought reimbursement from the plaintiff's settlement proceeds.

The plaintiff's attorney initially held the settlement proceeds in trust and attempted to resolve the ERISA plan's reimbursement claim. After discussions with the ERISA plan broke down, the plaintiff's attorney said he would be distributing the settlement proceeds within 14 days unless the plan objected. The plan did not object, and the plaintiff's attorney distributed the proceeds. Six months later, the ERISA carrier sued the plaintiff, seeking repayment of the medical expenses it paid.

On appeal, SCOTUS held that the ERISA health plan could not proceed with its lawsuit against the plaintiff. The Court's reasoning turned on the language of the ERISA statute that allows health plans to file civil suits "*to obtain…appropriate equitable relief…to enforce the terms of the plan*." 29 U.S.C. §1132(a)(3). In short, the Court held the statute did not grant an ERISA plan the right to pursue a claim against non-traceable assets. Rather, the ERISA plan's equitable claims for reimbursement attach only to something tangible. Thus, if the plaintiff spent his settlement money on non-traceable assets, then the ERISA plan has no equitable power over those assets.

The fallout of *Montanile* is certain to be interesting. On one hand, plaintiffs' attorneys will be in the unusual position of telling their clients that they can legally avoid paying an

ERISA reimbursement by spending their settlement fast on things like services or food. On the other hand, ERISA plans will likely want to get ahead of this problem. That may mean that ERISA plans will pursue preemptive legal actions against plaintiffs, liability insurers, or both, asking courts to enjoin distribution of a personal injury settlement. Suffice to say that things will get even wilder in the world of personal injury litigation.