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Life After Great-West: U.S. Supreme Court Confirms ERISA Health Plans' Right to Reimbursement from Third Party Recoveries

The U.S. Supreme Court recently delivered very favorable news to ERISA health plan sponsors by unanimously upholding the right to seek reimbursement from a plan participant pursuant to an appropriate subrogation and reimbursement clause in the plan document. *Sereboff v. Mid Atlantic Medical Services , Inc.*, No. 05 250 (U.S. May 15, 2006). In Sereboff, the Supreme Court held that a self-funded ERISA health plan may obtain equitable relief under ERISA section 502(a)(3) to enforce the plan's subrogation and reimbursement plan provision. The Supreme Court's decision in Sereboff is welcome news for plan sponsors because it settles questions about the ability to enforce subrogation and reimbursement rights that, in some areas of the country, courts had eliminated after the Supreme Court's Great-West Life & Annuity Insurance Company v. Knudson decision in 2002. Plan sponsors may now, regardless of geographic location, use ERISA section 502(a)(3) to recover payments advanced on a plan participant's behalf to cover medical and/or loss of time expenses pending the resolution of the participant's claim against a third party responsible for the cause of the participant's claim.

POSTED:

Jun 4, 2006

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The Sereboff Case Facts

Marlene and Joel Sereboff were beneficiaries of an ERISA health plan sponsored by Ms. Sereboff's employer and administered by Mid Atlantic Medical Services, Inc. ("Mid Atlantic"). The ERISA health plan contained an "Acts of Third Parties" provision mandating that a plan beneficiary injured by the act of a third party must first reimburse the plan for any benefits that the plan had advanced on his or her behalf from any money that the participant recovered from any third party, whether by lawsuit, settlement or otherwise.

The Sereboffs were involved in an automobile accident, and Mid Atlantic paid the couple's medical expenses pursuant to the terms of the plan, which totaled approximately $75,000. After commencing a state court tort action against several third parties seeking damages for the injuries caused by the accident, the Sereboffs obtained a settlement for $750,000, and their attorney distributed the settlement funds to them.

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Immediately following the commencement of the lawsuit and at several times during the course of the litigation, Mid Atlantic notified the Sereboffs' attorney that the plan was actively asserting a lien on the anticipated proceeds from the suit for the medical expenses that Mid Atlantic had advanced on the Sereboffs' behalf. The Sereboffs and their attorney consistently failed to acknowledge Mid Atlantic's lien and refused to send any money to Mid Atlantic to satisfy the claimed lien after the settlement with the third party insurance carrier. Mid Atlantic sued the Sereboffs in federal court under ERISA section 502(a)(3), seeking reimbursement for the medical expenses that Mid Atlantic had paid on the Sereboffs' behalf. Pending the outcome of the litigation, the Sereboffs agreed to set aside the $75,000 in dispute in a trust account. The district court ordered the Sereboffs to reimburse Mid Atlantic. The Sereboffs appealed to the Court of Appeals for the Fourth Circuit, which affirmed the lower court's ruling. The Sereboffs then appealed the case to the U.S. Supreme Court.

Why the Supreme Court Decided to Hear the Sereboff Case

After the 2002 Knudson decision, the various federal courts of appeal proceeded to publish vastly different opinions on the viability of plan subrogation and reimbursement rights under ERISA section 502(a)(3). To the chagrin of many ERISA health plans in select mid-eastern and western states, the Courts of Appeal for the Sixth and Ninth Circuits interpreted Knudson to mean that ERISA plans had absolutely no right to pursue subrogation or reimbursement claims under ERISA section 502(a)(3). Four other courts of appeal held that Knudson did not completely restrict a plan's right to reimbursement of advanced medical and/or loss of time benefits under ERISA if the plan sought an equitable lien on particular funds held by the participant that, in good conscience, belonged to the plan.

The *Sereboff* Decision. The Supreme Court agreed to hear the Sereboff case to resolve the disagreement among the circuits regarding the ability of a plan to seek equitable relief under ERISA section 502(a)(3). In a unanimous decision authored by Chief Justice Roberts, the Supreme Court held in favor of Mid Atlantic. As a result, in all federal courts of the United States (including the Sixth and Ninth Circuits), a self-funded ERISA plan may now enforce its subrogation and reimbursement provisions under ERISA section 502(a)(3) if the plan seeks specifically identifiable funds that come within the possession and control of a participant.

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Action Items for Plan Sponsors

Plan sponsors should consider the following actions to preserve their plan's subrogation and reimbursement rights:

1. Review all health plan documents for appropriate subrogation and reimbursement language. After Sereboff, it is critical that the subrogation and reimbursement language in a plan document allows the plan to recover benefits paid on a participant's behalf from all third party recoveries, whether by lawsuit, settlement or otherwise, on a first priority basis. Ideally, a plan document should also expressly disavow any common law defense to reimbursement that a participant may raise in an attempt to limit the plan's recovery, such as the make whole doctrine or the common fund doctrine. Plan sponsors may want to consult legal counsel to determine if a plan's language satisfies the plan sponsor's goals.
2. Review the health plan summary plan description for subrogation and reimbursement language that mirrors the language contained in the plan document. Courts are generally reluctant to enforce subrogation and reimbursement provisions that do not appear in employee communications and are apt to rule in favor of individuals if an SPD is inconsistent with the governing plan.
3. Implement sound administrative procedures to identify claims caused by a third party. If a plan is going to pursue subrogation or reimbursement with respect to a particular claim, the plan administrator should notify all interested parties (the participant, the participant's attorney, any third-party insurance carrier, etc.) of the plan's lien against the proceeds of any anticipated third-party recovery. For example, the plan administrator may wish to obtain a signed reimbursement agreement from the participant and/or correspond to all interested parties on a periodic basis throughout the process, asserting the plan's lien.
4. ERISA requires plan fiduciaries to enforce a plan's subrogation and reimbursement provision in a reasonable, diligent and systematic manner. Plan fiduciaries must determine a reasonable course of action for each potential subrogation and/or reimbursement claim. Plan fiduciaries may wish to consult legal counsel regarding the most cost-effective and efficient way to proceed in a specific instance, taking into account the best interest of plan participants.

Please contact your Reinhart attorney or contact any Reinhart Employee Benefits

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attorney for additional guidance regarding your plan's subrogation and reimbursement language or to obtain assistance in enforcing your plan's rights.

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