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Supreme Court: Health Plan Recovery Of Expenses Can Be Thwarted By Spendthrift Participant

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In an 8-1 decision issued yesterday, the U.S. Supreme Court ruled that a health plan's right of recovery against a plan participant who obtains an award from a third party found responsible for the participant's injuries can be defeated if the participant spends the award, even though the participant has other assets sufficient to reimburse the health plan. The case of *Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan* involved a health plan's unsuccessful attempt to recover $121,000 in medical expenses paid on behalf of Robert Montanile for the treatment of injuries he suffered in an automobile accident caused by a drunk driver from whom Montanile received an award that netted him $240,000 after attorneys' fees and litigation costs. The case holds some important lessons for health plan sponsors wanting to preserve their right to reimbursement for plan expenditures when a participant obtains an award based on a third party's actions that led to the expenditures.

Differences between the remedies available in courts of law versus courts of equity prior to the time the two types of courts merged in 1938 caused the Supreme Court majority to interpret statutory language in the Employee Retirement Income Security Act of 1974 ("ERISA"), permitting a plan to obtain "appropriate equitable relief," to limit a plan's remedies against a participant to "those categories of relief that were typically available in equity." This interpretation led the Supreme Court to conclude that an equitable lien, such as the health plan held by virtue of the plan's subrogation provisions requiring a participant to reimburse the plan's expenditures if the participant obtained a third party recovery, was enforceable only to the extent that the participant was in possession of specifically identifiable property or funds to which the lien attached.

If in a court of equity, the majority observed, the participant dissipated the entire fund on non-traceable items (such as services, travel, or consumable items like food), instead of preserving the specific funds subject to the lien, "that complete dissipation eliminated the lien." The plan would not then be able to seek its remedy from the participant's general assets "because those assets were not part of the specific thing to which the lien attached" and therefore were outside of the court's equitable jurisdiction. In the lone dissent, Justice Ginsburg lamented that after pledging to reimburse the health plan for $121,000 of expenditures made on his behalf, Mr. Montanile is able to "escape that reimbursement obligation, the Court decides, by spending the settlement funds rapidly on non-traceable items," and that the majority's "bizarre conclusion" results from a misguided reading of congressional intent at the time of ERISA's enactment in 1974.

A plan sponsor, particularly in the case of a self-insured group health plan, must be especially vigilant in protecting its right to recover amounts expended on the participant's behalf should the participant ultimately obtain a third party award or settlement. In light of *Montanile*, it is necessary, though not always sufficient, to have appropriate subrogation language in the plan document. And unlike the health plan in *Montanile*-which did not file suit for six months after receiving a letter from the participant's attorney notifying the plan that he was going to disburse the award to his client absent any objection from the plan within 14 days-a plan may have to move swiftly to enforce its subrogation rights.