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ERISA Litigation

Alert

Recent Case Holds That ERISA Plan Fiduciaries Cannot Seek Reimbursement from the Contingency Fee Award to the Participant's Attorney

BY MARK S. THOMAS AND ROBERT W. SHAW

A recent decision in the U. S. District Court for the Eastern District of North Carolina has held that a plan administrator with a claim against the insured for amounts recovered from a third party for medical benefits cannot pursue equitable remedies against the contingency fee attorney under the Employee Retirement Income Security Act of 1974 ("ERISA").

The plaintiff in *T.A. Loving Company v. Denton, et al.* (E.D.N.C. Jul. 14, 2010), was T.A. Loving Company ("T.A. Loving"), the sponsor and plan administrator of an employee medical benefit plan. The plan participant was an employee, Annette Denton, who suffered injuries in a motor vehicle accident and received medical benefits from the T. A. Loving plan. Denton filed a personal injury lawsuit against the negligent driver involved in the collision and received a $100,000 settlement. Of the $100,000 settlement, Denton's contingency fee attorney retained $33,833.88 as a contingency fee.

The plan contained a reimbursement and subrogation clause, requiring the participant to reimburse the plan when benefits were provided for injuries caused by a third party and the participant recovered money damages from that third party. Following Denton's settlement with the negligent driver, T.A. Loving filed suit on behalf of the plan against Denton and her attorney for reimbursement of the medical benefits that she had received. The court granted summary judgment against Denton and ordered her to reimburse the plan from the portion of the settlement that she had received. However, the court denied summary judgment against the attorney because he was not a party to the subrogation clause in the plan.

T.A. Loving Company underscores that an employee medical benefit plan must seek reimbursement directly from the participant, and that the Supreme Court's ruling on ERISA reimbursement and subrogation provisions in *Sereboff v. Mid Atlantic Medical Services, Inc.*, 547 U.S. 356 (2006), did not expand the scope of equitable restitution against third parties. Therefore, plans would be well-advised to follow the approach of Mid Atlantic Medical Services, Inc. in *Sereboff* and assert reimbursement rights against the participant's damages awards or settlements early in the participant's lawsuit. In doing so, it is vitally important that the plan specifically identify the fund of dollars that is subject to the equitable claim for relief, and who is holding that money.

For more information about this topic, please contact the authors or any member of the Williams Mullen ERISA Litigation Team.

Williams Mullen ERISA Litigation Team

Mark S. Thomas
Team Chair
919.981.4025
mthomas@williamsmullen.com

Brydon M. DeWitt
804.420.6917
bdewitt@williamsmullen.com

Heath H. Galloway
804.420.6466
hgalloway@williamsmullen.com

Lynn F. Jacob
804.420.6427
ljacob@williamsmullen.com

James V. Meath
804.420.6412
jmeath@williamsmullen.com

Robert F. Redmond, Jr.
804.420.6439
rredmond@williamsmullen.com

Robert W. Shaw
919.981.4310
rshaw@williamsmullen.com