

May 19, 2006

Supreme Court Revisits Subrogation

The U.S. Supreme Court's decision on May 15, 2006, in *Sereboff v. Mid Atlantic Medical Services, LLC*, further clarified the remedies available to plans for the recovery of previously-paid benefits out of amounts received by participants from third parties.

The Sereboffs were involved in an automobile accident, which resulted in the Mid Atlantic Medical Services group health plan paying accident-related medical benefits of \$74,869.37. The plan attempted to recover those medical benefits by imposing an equitable lien on the Sereboffs' \$750,000 settlement recovery from an insurer of a third party involved in the accident. However, the Sereboffs refused to reimburse the plan and instead put the money in investments they controlled. The plan included an "Acts of Third Parties" provision (often referred to as a subrogation clause) which specifically identified a particular fund distinct from the Sereboff's general assets and a particular share of that fund to which the plan was entitled. The plan provision permitted the plan to follow the portion of the recovery into the Sereboff's hands as soon as the settlement fund was identified and imposed on such portion a constructive trust or equitable lien. The plan also included a provision that the plan's share of the recovery would not be reduced if the beneficiary had not received full damages claimed unless the plan agreed in writing to a reduction.

The Court concluded that the plan was entitled under ERISA to recover the amount from the Sereboffs because the settlement funds were in the hands of the Sereboffs and the plan's provision created an equitable lien that was enforceable by the plan. The court distinguished its *Great-West v. Knudson* decision by indicating that in *Great-West* the insurer sought to impose personal liability on the participant in the plan and did not seek an equitable lien on identifiable funds or from particular property that was in the hands of the participant. (In *Knudson*, the recovery by the participant was placed in a "Special Needs Trust" under California law.)

Self-insured, employer-sponsored group health plans should consider reviewing the language of their subrogation or third party recovery provisions in light of the *Sereboff* decision and the language in that plan which permitted recovery of the third party settlement.

If you have any questions regarding the foregoing, please feel free to contact one of the attorneys listed below.

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