

## Fifth Circuit Holds that Plan Can Obtain Reimbursement from Special Needs Trust

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The federal Court of Appeals for the Fifth Circuit, whose jurisdiction covers the states of Texas, Louisiana, and Mississippi, issued an opinion on May 7, 2013 in *ACS Recovery Services, Inc. v. Griffin*, holding that the plan administrator and plan sponsor (collectively, "ACS") of the group medical plan that covered employee Larry Griffin (the "Plan") could recover from a special needs trust nearly \$50,000 of medical expenses paid by the Plan on Mr. Griffin's behalf when he was injured in an automobile accident. Mr. Griffin and his ex-wife filed suit against the company responsible for the other vehicle (the "Third Party") and obtained a settlement with a present value of just over \$294,000. The Plan's terms provided that it would have a first lien upon any recovery, whether by settlement, judgment, arbitration, or mediation obtained in a third-party action, and further provided that a participant must not take any action that might prejudice the Plan's rights to reimbursement. ACS had notified Mr. Griffin's attorney of these provisions shortly after suit was filed against the Third Party. Nevertheless, under the terms of the settlement agreement, which Mr. Griffin signed, some of the settlement proceeds were segregated for attorneys' fees and other expenses, and the remaining sum was used by the Third Party's insurance company to purchase an annuity contract, pursuant to which monthly payments would be paid into a statutory special needs trust for Mr. Griffin's benefit over a 20-year period. Notably, Mr. Griffin had warranted in the settlement agreement that all of his medical costs had been paid and that all liens for his medical care had been released or satisfied. ACS filed suit under ERISA against the trust, the trustee, Mr. Griffin, and his ex-wife. In the suit, ACS sought a constructive trust on the amounts paid by the Plan to Mr. Griffin for his medical expenses and requested that the defendants be enjoined from interfering with the Plan's right of reimbursement. The district court ruled in favor of the defendants, holding that ACS was seeking legal, not equitable, relief because neither Mr. Griffin nor the trust had possession or control of the settlement funds held in the annuity. In addition, the district court held that, since Mr. Griffin never had any possession or control over the settlement proceeds ultimately funding the trust through the annuity, equitable relief was not available against the trust. The Fifth Circuit reversed the lower court's ruling as to ACS's right to reimbursement from the trust and the trustee, holding that Mr. Griffin had a pre-existing agreement with ACS to reimburse the Plan for payments on his behalf in the event of a third-party recovery and that his signature on the settlement agreement triggered an equitable lien by agreement for the benefit of ACS that was superior to his own right to the funds. The court also pointed out that in order to assent to the disposition of the funds as outlined in the settlement agreement, Mr. Griffin must have had at least constructive possession and control of the funds. Moreover, the court held that the annuity and the monthly payments to the trust were an identifiable fund to which the Plan's lien attached and that under ERISA, appropriate equitable relief demanded the imposition of a constructive trust on the proceeds of the annuity as they accrued to the trust. *ACS Recovery Services, Inc. v. Griffin*, No. 11-40446 (5th Cir. May 7, 2013).