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U.S. SUPREME COURT BREATHES NEW LIFE INTO HEALTH PLAN REIMBURSEMENT CLAIMS

On May 15, 2006, the United States Supreme Court sustained a health plan's right to enforce its reimbursement provision against plan participants who recovered funds from a third party at fault for the participants' injuries. In *Sereboff v. Mid Atlantic Medical Services Inc.*, U.S., No. 05-260, 5/15/06, the Supreme Court ruled that the plan's claim for reimbursement from identifiable funds in the participants' possession was "appropriate equitable relief" that may be sought under section 502(a)(3)(B) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA.")

Prior to this case, the Supreme Court's holding four years ago in *Great-West Life & Annuity Insurance Co. v. Knudson*, 534 U.S. 204 (2002) cast doubt on the ability of plans to bring claims to enforce reimbursement provisions as equitable relief under ERISA Section 502(a)(3)(B). In *Knudson*, the Court held that ERISA section 502(a)(3) allows traditional equitable remedies, but it characterized the claim to enforce a plan's reimbursement provision as essentially a claim for money damages, a classic form of legal relief which is not available under ERISA. Following *Knudson*, there was a split in the circuits as to whether *Knudson* totally barred a plan's right to reimbursement.

In *Sereboff*, the Court held that in order to be characterized as an equitable claim under ERISA, the plan must seek to impose a constructive trust or lien on identifiable funds or property in the defendant's possession and control. The Court distinguished *Knudson* on the grounds that in *Knudson* the funds recovered from the third party were held in a special needs trust not within the possession and control of the participant. In *Sereboff*, the participants placed funds sufficient to satisfy the plan's reimbursement claim in an investment account that remained within the participants' possession. The Court held that because identifiable funds were in the possession of the participants, the plan language created an equitable lien which is "equitable relief" authorized under ERISA. In addition, the Court held that strict tracing rules do not apply in cases such as *Sereboff* where the plan's claim is indistinguishable from an action to enforce an equitable lien imposed by agreement.

RECOMMENDED ACTION

Although *Sereboff* provides reassurance that plans can enforce reimbursement provisions, plans must be proactive in order to effectively avail themselves of this equitable remedy. We recommend that plan sponsors respond to this case in the following ways:

- Review health plan reimbursement provisions to be sure that they contain appropriate language to impose a constructive trust or to create an equitable lien on specifically identifiable funds. Make any necessary revisions to the plan document and summary plan description.

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- Develop plan procedures to identify and monitor claims involving acts of third parties.
- Develop procedures for making and documenting fiduciary determinations regarding the appropriateness of pursuing particular reimbursement claims.
- Take appropriate measures under the circumstances to preserve the identified funds before they are dissipated. These measures may include asserting a lien, intervening in the participant's tort action, or seeking injunctive relief.

If you would like additional information regarding the issues discussed in this Alert or assistance with any of the recommended action steps, please contact any member of the HRO Employee Benefits Team listed on the first page of this Alert.

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