

June 2002

LIMITATION PLACED ON RECOVERY OF ERISA LIEN

by Ted Babbitt

When Congress passed the Employee Retirement Income Security Act in 1974 (ERISA) a bi-product of that Act greatly affected the ability to settle personal injury claims. Ordinarily a health insurer's right to reimbursement is controlled in Florida by Fla. Stat. 768.76(5). That statute provides that the lien created by a health insurance policy is subject to proration by various equitable elements.

Large companies, which have self-funded ERISA plans, have taken the position that they are not subject to Fla. Stat. 768.76(5). Instead, they argue that ERISA preempts all State law and that they are, therefore, able to obtain complete reimbursement of all amounts paid pursuant to an ERISA plan. When there is limited coverage or weak liability and substantial amounts have been paid through health insurance, the presence of an ERISA lien makes settlement practically impossible. ERISA plans regularly take the position that there is no offset for attorney's fees or costs and that 100% reimbursement must be made. Failure to make payment produces a threat of Federal Court enforcement since it is argued that ERISA provides that Federal Courts have exclusive jurisdiction over these liens.

The Supreme Court of the United States put a huge dent in the argument of ERISA plans for full reimbursement when it decided the case of

Great-West Life & Annuity Insurance Co. v Knudson, 534 U.S. 204, 122 S.Ct. 708, 151 L.Ed.2d 635 (U.S. 2002).

In the Great-West case, the ERISA plan covering the plaintiffs paid over \$400,000.00 in medical expenses. The plaintiffs then brought a State Court tort action and obtained a settlement from the manufacturer of their car. The settlement provided for attorney's fees and a substantial amount to be set aside in a "special needs trust." A little less than \$14,000.00 was earmarked for medical expenses and that portion was set aside by the plaintiffs to satisfy Great-West's lien.

Great-West brought an action in Federal Court under §502(a)(3) of the ERISA Act which authorizes a civil action "to enjoin any act or practice which violates . . . the terms of the plan . . . or to obtain other appropriate equitable relief." The purpose of the action was to force the plaintiffs to pay the ERISA plan the full amount of the medical expense lien. The Supreme Court held that no cause of action existed under ERISA to enforce the terms of the plan. Instead, the Court determined that the ERISA Act only allowed equitable relief and that the insurer was seeking legal relief in what amounted to a breach of contract action. The Court pointed out that personal contractual liability is not the type of relief that was available in equity and since the ERISA Act only provides for equitable relief, traditional legal relief is not available under the Act.

The basis for petitioners' claim is not that respondents hold particular funds that, in

good conscience, belong to petitioners, but that petitioners are contractually entitled to *some* funds for benefits that they conferred. The kind of restitution that petitioners seek, therefore, is not equitable – the imposition of a constructive trust or equitable lien on particular property – but legal – the imposition of personal liability for the benefits that they conferred upon respondents.

\* \* \* \* \*

It is easy to disparage the law-equity dichotomy as ‘an ancient classification,’ . . . and an ‘obsolete distinction,’ . . . Like it or not, however, that classification and distinction has been specified by the statute; and there is no way to give the specification meaning – indeed, there is no way to render the unmistakable limitation of the statute a limitation *at all* – except by adverting to the differences between law and equity to which the statute refers.

\* \* \* \* \*

In the very same section of ERISA as §502(a)(3), Congress authorized ‘a participant or beneficiary’ to bring a civil action ‘to enforce his rights under the terms of the plan,’ without reference to whether the relief sought is legal or equitable. . . . But Congress did not extend the same authorization to fiduciaries. Rather, §502(a)(3), by its terms, only allows for *equitable* relief. We will not attempt to adjust the ‘carefully crafted and detailed enforcement scheme’ embodied in the text that Congress has adopted. . . . Because petitioners are seeking legal

relief – the imposition of personal liability on respondents for a contractual obligation to pay money -- §502(a)(3) does not authorize this action. Accordingly, we affirm the judgment of the Court of Appeals.

What does all this mean? Does it actually affect the ability of an ERISA plan to recover 100% reimbursement? On its face what appears to do is relegate the issues surrounding an ERISA lien to State Court rather than Federal Court. One of the dissenters (this was a 5 to 4 decision) makes it clear that future decisions concerning ERISA liens will take place in State Court rather than Federal Court.

After today, ERISA plans and fiduciaries unable to fit their suits within the confines the Court's opinion constructs are barred from a federal forum; they may seek enforcement of reimbursement provisions like the one here at issue only in state court. Many such suits may be precluded by antisubrogation laws, . . . others may be preempted by ERISA itself, and those that survive may produce diverse and potentially contradictory interpretations of the disputed plan terms.

Left open for decision by State Courts is whether ERISA plans now stand in no better position than non-ERISA plans with respect to repayment of medical liens. States have differing laws with respect to the relief available for the recovery of medical liens. Some State common law adopts the "Made Whole" Doctrine" under which plaintiffs do not have to repay a lien until they have been

made completely whole in the recovery of all of their damages. Other states have adopted the “Common Fund Doctrine” under which a sum obtained in a tort suit is considered to be the creation of a common fund for the benefit of both the insurer and the plaintiff with a resultant proration based upon the costs and attorney’s fees obtained.

Florida has a specific statute which details the procedure for obtaining recovery of a medical lien. Can ERISA plans avoid the terms of that statute by requiring a State Court to adopt either Federal common law or the ERISA statute itself in enforcement of its lien? Those questions remain unanswered, but what is clear is that ERISA plans no longer have a lock on recovery of their liens and will either have to make substantial concessions concerning the amount they are entitled to recover or face the uncertainties of a State Judge’s decision as to the amount to which they are entitled.

NOTE: BECAUSE A NUMBER OF PEOPLE HAVE REQUESTED COPIES OF PAST ARTICLES, A COMPILATION OF THESE ARTICLES IS NOW AVAILABLE TO MEMBERS OF THE PALM BEACH COUNTY BAR ASSOCIATION, FREE OF CHARGE, BY CALLING (561) 684-2500.