Health care plans have long sought to obtain reimbursement from plan participants and beneficiaries where the participant or beneficiary recovers from a third party. A typical situation is where a plan pays medical benefits to a plan participant involved in a car accident. Subsequently, the participant sues the other party involved in the accident and recovers damages. The plan then seeks reimbursement of the amount of medical benefits previously paid to the plan participant.

A recent U.S. Supreme Court decision clarifies how plans may seek such reimbursements. In *Sereboff v. Mid Atlantic Medical Services, Inc.*, two plan beneficiaries were injured in an automobile accident resulting in benefit payments of $75,000 for medical expenses. The beneficiaries subsequently sued the other parties involved in the accident and obtained a settlement of $750,000. The health plan sought reimbursement from the beneficiaries based on the plan’s reimbursement provision, which provided that beneficiaries were required to reimburse the plan for benefits paid from “all recoveries from a third party.”

After the plan administrator unsuccessfully sought voluntary payment by the beneficiaries, he sued the beneficiaries under section 502(a)(3) of ERISA, which provides that a fiduciary may seek “appropriate equitable relief.” The beneficiaries sought dismissal of the suit, claiming that the plan administrator’s suit did not seek “equitable relief,” but legal (monetary) damages, and was therefore prohibited by ERISA. The parties did agree to set aside $75,000 in an investment account, pending the outcome of the litigation.

The U.S. Supreme Court in *Sereboff* found that the plan sought permissible equitable relief under ERISA because the plan sought specifically identifiable funds in the form of the disputed proceeds that were set aside by the parties in the investment account. The Court also noted that the plan’s action was an equitable one because the plan sought to enforce a “equitable lien established by agreement” in the form of the plan’s reimbursement provisions, which identified specific funds (all recoveries from third parties) and a particular share or amount of funds (the portion of the third party recovery equal to the amount of benefits paid by the plan) that the plan sought.

The *Sereboff* decision resolves an important issue left open by the Court’s prior decision in *Great-West Life Insurance Company v. Knudson*: whether any form of monetary recovery could be obtained through equitable relief, or whether only injunctive relief would be allowed. In *Great West*, the money recovered by a participant’s lawsuit had been placed in a special needs trust, which was beyond the control of the plan participants. Based on this fact, the Court found that the plan in that case was not seeking equitable recovery of a specific fund, but rather legal damages, which are not recoverable under ERISA. The Court’s *Sereboff* decision provides plans with two important results: (1) it clarifies that plans can seek certain kinds of equitable relief and thereby receive reimbursements of benefits previously paid and (2) it provides a basic roadmap for plans to accomplish such reimbursements.

In light of the Court’s decision, employers should immediately review their health and welfare plans to include the necessary provisions for reimbursement of benefit payments where the participant recovers funds from a...
third party. In addition, we recommend that companies also review their retirement plans in light of the *Sereboff* decision to include provisions for reimbursement of benefit overpayments. In reviewing plans, an employer should consider the following issues:

- Plan documents should be amended to create an “equitable lien” on any recovery by a participant, whether by settlement or otherwise. Care should be taken to ensure that the plan’s provisions provide both for subrogation and reimbursement with respect to any plan benefits that are paid.

- The plan should diligently track and pursue any suits by plan participants or beneficiaries so that the plan can timely exercise its reimbursement rights. As noted above, the difference in the result between *Great West* and *Sereboff* turned on the location of the money when the plan filed suit. While in *Sereboff* the parties voluntarily agreed to set aside the money in an investment account pending litigation, other plans may need to seek temporary restraining orders to ensure that the funds are not dissipated prior to or during litigation.

- Plan administrators should consider whether to incorporate provisions refusing to share in the participant’s attorneys’ fees and refusing to abide by the make whole doctrine. The make whole doctrine may substantially affect the amount of a plan’s recovery and therefore may not be advisable; payment of attorney’s fees, however, may still provide the plan with recovery and perhaps avoid participant claims that the recovery sought was not “appropriate” equitable relief.

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If you would like to receive more information about this subject, or if we can be of assistance, please contact any of the following attorneys in Womble Carlyle's Employee Benefits Group. The purpose of this article is to provide a general summary of significant legal developments to our clients and friends. It is not intended as and should not be construed as legal advice regarding any specific facts and circumstances.

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