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MONTANILE v. BOARD OF TRUSTEES OF THE NATIONAL ELEVATOR INDUSTRY HEALTH BENEFIT PLAN

No. 14–723

In January The Supreme Court decided yet another subrogation case however, this one applies in such limited circumstances that it may be of no value to plaintiff's counsel. Mr. Montanile was injured by a drunk driver and received a \$500,000 settlement. After attempts to resolve the plan's \$122,000 lien failed, the Nat'l Elevator Industry Health Plan was notified that funds would be distributed unless they objected.

The fund did not respond and Mr. Montanile was given the settlement funds. Six months later the plan filed suit to recover its \$122,000 lien. The District Court and 11th Circuit held that whether some or all of the funds had been dissipated, the plan retained a right of full reimbursement from Montanile's general assets. The plaintiff stipulated that he had not yet spent the entire settlement.

The Supreme Court reversed finding that an equitable lien was against the res not the person and thus only those traceable funds would be subject to a lien. The court defined traceable items as cars, houses, and non-traceable to include food or travel. The case was remanded back to the district court for a determination of how the settlement funds were spent.

We see this decision as having value only in those cases where: (1) the plan is not involved or non-responsive; (2) the attorney, after sufficiently advising the client of the pitfalls of spending the money, distributes the money to the client; and (3) the funds are spent on the kind of items that could not be seized for a sheriff's sale. This case could not reasonably be seen as the end of ERISA subrogation.

One final caution, before considering this potentially risky move, be certain your client's health plan does not have an offset provision. More than half the subrogation provisions we see allow the plan to withhold future benefits if a lien is not satisfied. Health plans are not required to provide coverage for accidents under PPACA. The ruling from this case should be used to get the attention of the health plan or subrogation vendor as a means to more promptly resolve the lien.