

## **Supreme Court Rules in Favor of Claimant in ERISA Reimbursement Dispute (Guest blog)**

In *Montanile v. Bd. of Trs. of the Nat'l Elevator Indus. Health Ben. Plan*, No. 14-723, 2016 U.S. LEXIS 843 (2016), the U.C. Supreme Court dealt a decisive victory to employees when it ruled 8-1 that an employee benefit plan may not garnish a plan participant's general assets in order to recover an overpayment. The decision means that participants in employee benefit plans who receive income from a tort settlement, Social Security disability award, pension miscalculation, or source of deductible income will not be subject to liability under the ERISA statute, 29 U.S.C. § 1132(a)(3), if the participant spends the funds on "non-traceable items" (e.g., food, gas, rent, and other consumables) before the plan enforces its lien.

Plan participants may still be subject to liability in contract, however, if they sign a separate reimbursement agreement with the plan; and attorneys who interfere with the enforcement of such side agreements could be liable for tortious interference with contract. See *Health Cost Controls v. Bode*, No. 93 C 3557, 1994 U.S. Dist. LEXIS 7820 (N.D. Ill. June 8, 1994); *McCotter v. Longo*, No. 95 C 5985, 1997 U.S. Dist. LEXIS 3990 (N.D. Ill. Mar. 31, 1997). Participants and beneficiaries could also be liable to for common law fraud if they attempt to frustrate a plan's attempts to enforce its lien.

In a nutshell, the *Montanile* decision means that plans must be more prompt and aggressive in seeking to recover overpayments or risk losing their right of recovery.

Justice Thomas, delivering the opinion of the Court, observed that § 1132(a)(3) only permits plans to bring suits for "equitable" relief. At equity, Thomas wrote, "a plaintiff could ordinarily enforce an equitable lien only against specifically identified funds that remain in the defendant's possession or against traceable items that the defendant purchased with the funds (e.g., identifiable property like a car)."

Responding to concerns that the rule adopted by the Court would unduly burden plans, Thomas remarked that this was the balance Congress struck when it drafted the ERISA statute. Thomas noted that Congress could authorize plans to bring a civil action “to enforce [their] rights under the terms of the plan,” as it has authorized plan participants and beneficiaries to do (see 29 U.S.C. § 1132(a)(1)(B)), but it did not.

*Montanile* resolves a circuit split over whether plans may seek to impose a lien over a claimant’s general assets to recover overpayments. The First, Second, Third, and Seventh Circuits had previously permitted plans to obtain such relief, whereas the Eighth and Ninth Circuits had deemed such suits not enforceable.

United Policyholders, represented pro bono counsel, filed an [amicus brief](#) in support of the petitioner, Mr. Montanile, as did the Solicitor General for the U.S. Department of Labor, AARP, and the American Association for Justice (AAJ).

This article was written by Chicago policyholder attorney and UP volunteer Martina Sherman of [DeBofsky and Associates, P.C.](#), and edited by UP staff.