



Navigating Through Statutes, Insurance Policies, and Regulations
January 21, 2016

**ERISA Litigation Update: Subrogation and Other Hot Issues
Before the US Supreme Court**

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ERISA Litigation Update –
Subrogation and Other Hot Issues
Before the US Supreme Court

OAJ's Insurance Law CLE
January 21, 2016

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Do participants in a union-sponsored health
plan receive lifetime health care?

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Factual background –

- 1 CBA says that employees who retired after 12/31/95 who receive a pension benefit and have 95 points “will receive” a full company contribution for health care
- 2 Reference to Ex. B-1, which is “effective 1/1/98, and for the duration of this Agreement thereafter”

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**What happens after the expiration of the
“duration of this Agreement thereafter” ?**

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6th Circuit – *Yard-Man* presumption that silence equaled vested health benefits

3rd Circuit – presumption that silence did not equal vested health benefits

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The Supreme Court concluded 9-0 that –

- *Yard-Man* and its progeny do not represent **ordinary principles of contract law**
- No “thumb on the scale in favor vested retiree benefits” is appropriate
- When “a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life”

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2 questions:

1. What law applies now? Is the 3d Circuit's test doomed too?
2. What do "ordinary principles of contract law" say here? Will the retirees win anyway?

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The US SC's Oct. 2015 Term

Gobeille v. Liberty Mut. Ins. Co., Case No. 14-181

- Vermont law requires reporting of claims data and other "information relating to health care" – held to be partially preempted by ERISA
- Question Presented – "Whether the Second Circuit – in a two-to-one panel decision that disregarded the considered opinion advanced by the United States as *amicus* – erred in holding that [ERISA] preempts Vermont's health care database law as applied to the third-party administrator for a self-funded ERISA plan."
- Recurring ERISA issue – See *Sherfel v. Newson*, 768 F.3d 561 (6th Cir. 2014) (Wisconsin's state FMLA)

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The US SC's Oct. 2015 Term

Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan, Case No. 14-723

- The latest ERISA reimbursement case

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Great-West - 2002

Great-West Life & Annuity Insurance Co. v. Knudson,
534 U.S. 204 (2002)

- Section 1132(a)(3) of ERISA does not authorize a claim for legal relief – a contractual obligation under an ERISA plan to pay money to reimburse medical expenses

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Sereboff - 2006

Sereboff v. Mid Atlantic Medical Services, Inc., 547 U.S. 356 (2006)

- Section 1132(a)(3) of ERISA does authorize an “equitable lien by agreement” claim for specifically identifiable funds

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US Airways - 2013

U.S. Airways, Inc. v. McCutchen, 133 S.Ct. 1537 (2013)

- Common-law equitable rules (like common fund) do not override the equitable lien by agreement, unless the plan is silent

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The Latest US Supreme Court case

Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan, Case No. 14-723

- Question Presented – Whether, under [ERISA], a lawsuit by an ERISA fiduciary against a participant to recover an alleged overpayment by the plan seeks “equitable relief” within the meaning of [1132(a)(3)] if the fiduciary has not identified a particular fund that is in the participant's possession and control at the time the fiduciary asserts its claim.”

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Be Very Careful

Longaberger Co. v. Kolt, 586 F.3d 459 (6th Cir. 2009)

- Lawyer sued by ERISA health plan for reimbursement, and **ordered to satisfy reimbursement from his attorney fee**

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THANK YOU!

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