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ERISA Group Health Plan's Self-Help Provision is Enforceable

The Ninth Circuit Court of Appeals, in *Mull v. Motion Picture Industry Health Plan; Board of Directors of Motion Picture Industry Health Plan*, has determined that an ERISA-covered group health plan has the right to recoup payments made to a participant to cover medical benefits when she subsequently recovers the amounts from a third party. In deciding the matter, the Ninth Circuit held that the plan's "self-help" remedy of recoupment did not violate or undermine ERISA.

Law. ERISA permits plan participants, beneficiaries, or fiduciaries to sue to enjoin a practice that violates ERISA or a plan's terms. However, this ERISA provision is limited by the remedies available; a cause of action under this provision can only be brought either "(a) to enjoin any act or practice which violates any provision of [ERISA] or the terms of the plan, or (b) to obtain other *appropriate equitable relief* (i) to redress such violations or (ii) to enforce any provisions of [ERISA] or the terms of the plan." (Emphasis added.) For example, ERISA cannot be used to impose personal liability on a plan participant based on a contractual obligation to pay money he or she received in connection with a third party settlement for injuries caused by the third party.

In addition, a previous Supreme Court decision ruled that where a defendant (*i.e.*, plan participant) to a reimbursement claim made by an ERISA-covered employee benefit plan has spent the entirety of the third party recovery, this strips the claim of its equitable nature and converts it to a legal claim.

Background. In *Mull*, the participant's covered daughter was injured in a car accident. The plan

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agreed to pay her medical expenses if she and the participant completed and returned a Third Party Liability Statement Form, wherein they agreed that if they received any money from a third party related to her injuries they would repay the plan for the medical expenses it paid on behalf of the daughter. The participant and daughter signed and returned the Form.

The plan documents contained two key terms. The first, a Reimbursement Clause, stated that if a participant or beneficiary suffers an injury, the plan will pay benefits only if the participant agrees to reimburse the plan for any settlement he or his eligible dependent subsequently recovers from a third party. The second, a Recoupment Clause, established a self-help remedy for the plan that could be used when a participant failed to comply with the Reimbursement Clause. It provided that if a participant did not reimburse the plan from the third-party recovery, the amount of the un-reimbursed benefits would be deducted from all future benefit payments to or on behalf of the participant or any dependent until the overpayment was resolved.

When the daughter subsequently received a settlement from a third party, she dissipated the settlement funds and did not repay the plan. Pursuant to the plan's Recoupment Clause, the plan began withholding payments for medical expenses for the participant and his beneficiaries in order to recoup the un-reimbursed benefits it paid for the daughter.

The participant and his family filed suit in federal district court against the plan for payment of their medical expenses. Before the district court, the plaintiffs had invoked the doctrines of illegality, impossibility of performance and unconscionability against the plan's recoupment provisions. The district court ultimately decided the matter in favor of the plan participant, based on the following key conclusions: (i) the plan should not be permitted to use self-help measures to terminate plan benefits of family members who did not recover anything and do not have a way to pay back the plan; (ii) ERISA barred the plan from exercising its self-help remedy because it imposed personal liability on a plan beneficiary based on a contractual obligation; and (iii) the Plan's self-help remedy violated ERISA's civil enforcement scheme. The plan fiduciaries appealed the district court's decision to the Ninth Circuit.

Ninth Circuit. In reviewing the matter, the Ninth Circuit first held that the contractual defenses asserted by the plaintiffs could not be used to defeat the plan's self-help remedy. The Court first explained

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that the mere fact that the plan's recoupment provision eschews reliance on ERISA did not make it an illegal undertaking. Next, the Court stated that impossibility was not an available defense where the contract provided for the contingency in question, *i.e.*, the decision by the participant's daughter to dissipate the funds rather than repay the plan. The Court also found that the plan's terms were neither procedurally nor substantively unconscionable because the participant had agreed to the recoupment provision in exchange for the medical benefits his daughter had received.

Second, the Ninth Circuit held that the requirements for establishing a claim for equitable relief under ERISA did not bar the plan from using its self-help remedy. While recognizing that fiduciaries could not use this provision to impose personal liability on a plan beneficiary based on contractual obligations to pay money, the Court clarified that in the instant matter the plan was defending an action brought by the plaintiffs to recover plan benefits. The Ninth Circuit concluded that even if the plan could not prevail against the plaintiffs on a claim for equitable relief under ERISA, it could use self-help measures as an alternative means to recoup overpaid benefits.

Finally, the Ninth Circuit held that the plan's self-help remedy did not violate ERISA's civil enforcement scheme. In reaching this determination, the Court rejected the plaintiffs' argument that if a plan fiduciary wanted to enforce the terms of a plan, it can do so only by bringing an action for equitable relief under ERISA. Alternatively, the Ninth Circuit found that plan fiduciaries may bargain for and implement self-help remedies that do not require judicial enforcement.

Based on the foregoing, the Ninth Circuit reversed and remanded the matter for further proceedings with instructions to the district court to enter an order granting summary judgment in favor of the plan.



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