



# SLEVIN & HART, P.C.

---

## Benefits Update

### **Sixth Circuit Recognizes Benefit Plan's Equitable Lien on Overpayment**

December 4, 2020

A recent federal appeals court ruling provides guidance to benefit plans seeking to recover benefit overpayments made to plan participants or beneficiaries. In *Zirbel v. Ford Motor Co.*, \_\_\_ F.3d \_\_\_, 2020 U.S. App. LEXIS 36081 (6th Cir. 2020), the Sixth Circuit Court of Appeals affirmed a lower court ruling requiring a beneficiary to return \$243,190 in retirement benefit overpayments made by Ford Motor Company ("Ford"). The case applies the Supreme Court's holding in *Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan*, 577 U.S. 136 (2016), as it relates to benefit plans' rights under ERISA to recover benefit overpayments.

In 2013, Ford paid pension benefits to Donna Jean Zirbel, the ex-spouse of a participant in the Ford Motor Company General Retirement Plan ("Plan"), in a lump sum of \$351,690. Zirbel paid taxes on the funds and deposited the rest in her bank account. She later moved some of the money to other accounts and gave some to her children. In 2017, Ford determined that, due to an error in calculating the benefit, Zirbel received an overpayment from the Plan in the amount of \$243,190.

Ford requested that Zirbel return the overpaid amount to the Plan as required under its terms. Zirbel appealed the request to return the overpaid amount and, when the Plan denied her appeal, she filed suit asking the federal district court to declare that she was entitled to keep the overpayment. Ford, as the Plan sponsor and administrator, filed a counterclaim seeking an equitable lien for the overpayment amount under ERISA Section 502(a)(3)(B).

Under ERISA Section 502(a)(3)(B), a benefit plan is entitled to obtain "appropriate equitable relief" to enforce the terms of the plan, which includes imposing a lien on specific funds or property in the defendant's possession. However, as the court in *Zirbel* noted, "[s]ometimes a wrongful possessor will argue that she no longer possesses the 'particular funds' to which a lien once attached, preventing recovery in equity." *Zirbel*, 2020 U.S. App. LEXIS 36081 at \*7.

The Supreme Court previously addressed this situation in *Montanile* in the context of a group health plan seeking reimbursement of amounts overpaid for medical benefits. In that case, the Supreme Court held that an equitable lien did not attach to a beneficiary's general assets if the beneficiary's general assets could not be traced back to the health plan's original payment. 577 U.S. at 151. *Montanile* explained that if funds are spent on "traceable items" such as tangible purchases of cars or homes, the equitable lien attaches to the traceable items and remains intact. On the other hand, if the funds are spent on nontraceable items such as food, services

or travel, no equitable lien can attach. The Supreme Court also noted in dicta that when funds can be traced to an account that contains other assets, the equitable lienholder obtains a lien on the account containing the commingled funds.

Applying *Montanile* to the overpayment in *Zirbel*, the Sixth Circuit held that Ford could recover its overpayment under ERISA Section 502(a)(3)(B) because it retained an equitable lien on the overpaid funds, even if they were commingled with Zirbel's other assets. The deposit of the overpayment into Zirbel's main bank account, as well as other accounts to which amounts were subsequently transferred, were all "traceable" under the analysis in *Montanile* and gave the plan an equitable lien over all such accounts that contained the commingled funds, up to the amount of the overpayment. Accordingly, the Sixth Circuit affirmed the lower court ruling requiring Zirbel to return the \$243,190 overpayment to the Plan.

The Sixth Circuit's holding in *Zirbel* clarifies the appropriate application of *Montanile* in situations where the overpaid funds are commingled with other assets belonging to the beneficiary. The opinion provides ERISA plans with additional legal precedent to pursue repayment where the overpaid amounts have been commingled with other funds in the recipient's bank accounts by allowing plans to obtain an equitable lien on the accounts holding the commingled funds, up to the amount of the overpayment.

We continue to monitor benefit overpayment cases as the law in this area develops. Please contact Slevin & Hart for more information about this case and how it could affect your plan's ability to recover benefit overpayments.

### Attorneys



Kristina F. Salamoun



Christopher M. Leins

*This publication is intended to provide general information only, and is not intended to provide legal advice. The distribution of our publications is not intended to create, and receipt of them does not constitute, an attorney-client relationship. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Slevin & Hart, P.C. as the author. All other rights reserved.*