

11TH CIRCUIT HOLDS THAT ERISA PLAN CAN PURSUE REIMBURSEMENT CLAIM EVEN WHERE FUNDS ARE BEING HELD BY THIRD PARTY

Administrative Committee for the Wal-Mart Stores, Inc. Associates Health and Welfare Plan v. Horton

By Ryan L. Woody

The Eleventh Circuit answered a particularly troublesome question that remained after the Supreme Court's infamous *Knudson* decision – Can an ERISA Plan seek reimbursement when settlement funds are being held by a third party in a special needs trust? *Administrative Committee For The Wal-Mart Stores, Inc. Associates Health and Welfare Plan v. Horton*, 07-10012 (11th Cir., Jan. 15, 2008) marks a significant victory for ERISA reimbursement litigation. The case arose after Joshua Horton, a minor, was injured after being struck by an automobile. His mother's ERISA Plan paid \$51,446.03 in benefits as a result of the accident. Joshua, through his custodial parent, Ms. Werber, brought suit against the driver responsible for the accident and eventually reached a \$99,000 settlement. The state court ordered that the settlement be allocated as follows: \$1,000 to Joshua's custodial parent, \$33,000 as attorney's fees, and \$65,000 to be deposited into the Hall County Probate Court for the benefit of Joshua. The probate court then appointed a conservator, who took possession of the \$65,000 and deposited it into a trust account. The ERISA Plan sought to recover its \$51,446.03 in benefits from Horton's recovery and filed a suit seeking equitable relief with the district court. The district court found in favor of the defendants and held that the Plan's suit was not properly equitable because it sought funds that were not in the possession of the plan member.

On appeal, the Eleventh Circuit was presented with the question of whether a Plan may pursue an equitable claim against a third party. After reviewing the U.S. Supreme Court's *Knudson* and *Sereboff* decisions, the court found in favor of the Plan. The court wrote:

The fact that Ms. Werber holds the funds as a third party does not defeat the Administrative Committee's claim. Under Knudson, Sereboff, and the other authorities cited above, the most important consideration is not the identity of the defendant, but rather that the settlement proceeds are still intact, and thus constitute an identifiable res that can be restored to its rightful recipient. Had the Administrative Committee solely sued parties not in possession of the disputed funds, the claim would have failed under Knudson because it merely would have sought to impose personal liability on those parties. Instead, the Administrative Committee also sued Ms. Werber in her capacity as conservator of Joshua's special needs trust, seeking restoration of that particular fund in which it asserts a paramount interest. Accordingly, the Administrative Committee properly seeking "other appropriate equitable relief" cognizable under § 502(a)(3), and the district court's grant of summary judgment must be reversed."

The *Horton* decision is a significant victory for ERISA Plans and reduces the possibility that plaintiff's attorneys will be able to place settlement funds beyond the reach of the Plan. It also provides an affirmative answer to the *Knudson* question that Plans can, in fact, seek reimbursement from a special needs trust fund. Going forward, *Horton* teaches that ERISA practitioners will need to always determine whether a third party has possession of the funds and add any third parties to the litigation.