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Montanile, *Amgen*, *Tackett* & *Moen*: Four Important Employee Benefits Cases to Kick Off 2016

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The year 2016 has only just started, and we have already seen several important court decisions related to employee benefit plans and the Employee Retirement Income Security Act of 1974, as amended (ERISA). This Client Alert provides a brief overview of four of these cases—Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan*,* Amgen Inc. v. Harris*,* Tackett v. M& G Polymers USA, LLC *and* John L. Callo, et al., v. Moen Inc. *These two U.S. Supreme Court cases and two Sixth Circuit cases, respectively, provide important decisions and insight for employers and fiduciaries of ERISA-covered plans.*

***Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan*: Supreme Court Limits Health Care Plan's Right to Reimbursement from Participant under ERISA Section 502(a)(3)**

In a blow to employers and plan sponsors, on January 20, 2016, the U.S. Supreme Court held in *Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan* (577 U.S. ____ (2016)) that an ERISA benefit plan cannot enforce an equitable right to reimbursement for costs against a plan participant's general assets when the participant has spent his or her third-party settlement on "non-traceable" items. Montanile received approximately $121,000 from the National Elevator Industry Health Benefit Plan (the Plan) to pay his medical expenses after Montanile was seriously injured in a car accident. The Plan, like most ERISA-covered plans, contained a subrogation clause, which required a participant to reimburse the Plan for any benefits paid to the participant from any related third-party settlement or award. In addition, Montanile signed a written agreement with the Plan reaffirming this reimbursement obligation. Montanile filed a lawsuit against the drunk driver responsible for his car accident, and ultimately received a $500,000 settlement. Montanile's lawyers held the settlement in a client trust account (approximately $260,000 after payment of attorney's fees and an advance to the client). When the negotiation with the Board of Trustees (as the Plan administrator) about the reimbursement terms broke down, Montanile's

attorney distributed the remaining funds to Montanile when the Board of Trustees did not object within the 14-day period set by Montanile's attorney. Six months later, the Board of Trustees sued Montanile under ERISA Section 502(a)(3) seeking repayment of the approximately $121,000 expended by the Plan for Montanile's medical care and an injunction against Montanile from using any of the third-party settlement funds. The district court held that the Plan was entitled to reimbursement from Montanile's general assets if Montanile had, as he indicated, already spent the specific settlement funds, and the Eleventh Circuit affirmed.

ERISA Section 502(a)(3) authorizes plan fiduciaries to file suit "to obtain other appropriate equitable relief ... to enforce ... the terms of the plan." To be considered an equitable claim, the basis of the claim as well as the nature of the underlying remedies must be equitable in nature. Here, the Supreme Court reiterated its position from a previous line of cases that enforcement of an equitable lien by agreement on a third-party settlement (such as, pursuant to a subrogation clause in an ERISA-covered plan) is an equitable claim appropriately brought by an ERISA plan fiduciary under ERISA Section 502(a)(3). However, the Court held that the underlying nature of the remedy sought by the Board of Trustees—enforcement of the equitable lien against Montanile's general assets—was not equitable in nature and, therefore, was not appropriate equitable relief permitted under ERISA Section 502(a)(3). This means that if Montanile did, in fact, spend the settlement funds on "nontraceable items (like food or travel)," the equitable lien was destroyed and the Board of Trustees could no longer seek recovery under ERISA Section 502(a)(3). However, the Court left open the possibility for the Board of Trustees to obtain equitable relief if Montanile had used the funds to purchase identifiable property (e.g., a car) or if he had actually commingled the settlement funds with another pot of money. The Court remanded the case back to the district court for a fact determination as to whether the settlement fund had, in fact, been spent on non-traceable items.

In light of the *Montanile* decision, employers and other plan fiduciaries should review the adequacy of subrogation and reimbursement provisions in plan documents and summary plan descriptions. In addition, employers should closely track participant claims and potential third-party legal proceedings so that the plan fiduciary can move quickly to assert reimbursement and subrogation rights before any third-party settlements or judgements may be depleted by participants. Plans should also have processes in place to quickly identify plan overpayments so that the plan can seek recovery of such amounts as quickly as possible. Last, the decision in *Montanile* will likely lead to a new series of litigation regarding determinations of when settlement or other third-party proceeds are properly commingled with other assets (so that the plan fiduciary may enforce the lien against the other assets) or what will be considered traceable versus non-traceable assets.

Amgen Inc. v Harris: Supreme Court Sends Employer Stock Drop Case Back to District Court in Light of Standards Set Forth in *Fifth Third Bancorp v. Dudenhoeffer*

On January 25, 2016, the U.S. Supreme Court decided *Amgen Inc. v. Harris* (577 U.S. ____ (2016)), in its first analysis of an employer stock drop case since the landmark decision in *Fifth Third Bancorp v. Dudenhoeffer*, 134 S. Ct. 2459 (2014). In *Dudenhoeffer*, the Supreme Court struck down the longstanding "*Moench* presumption," which had applied a presumption of prudence for a retirement plan fiduciary's decision to permit holding or purchasing employer stock in the retirement plan. (For more detailed discussion, see the article, "*Don't* "Moench" *ion It: Supreme Court Rejects Presumption of Prudence for ESOP Fiduciaries,*" in the Summer 2014 edition of *Perspectives*.)

In *Amgen*, current and former employees who were participants in Amgen's retirement plans that held investments in the Amgen Common Stock Fund filed a class action suit against the fiduciaries of the plans when the value of Amgen stock declined significantly. The participants alleged that the plan fiduciaries,

based on non-public information, had breached their duty of prudence by continuing to allow the plan's investment in the Amgen Common Stock Fund. Initially, the district court granted the fiduciaries' motion to dismiss and the Ninth Circuit reversed. While the petition for writ of certiorari was pending, the Supreme Court issued its decision in *Fifth Third Bancorp v. Dudenhoeffer* and, accordingly, remanded the *Amgen* case back to the Ninth Circuit for further proceedings consistent with the *Dudenhoeffer* decision. The Ninth Circuit again reversed the district court's dismissal of the complaint, and the fiduciaries again petitioned the Supreme Court.

Here, the Supreme Court reversed the Ninth Circuit and held that the "Ninth Circuit failed to properly evaluate the complaint" in light of the standards for ERISA fiduciary liability set forth by the Court in *Dudenhoeffer*. In particular, the Court noted that the claim for a breach of the duty of prudence must "plausibly allege" that a prudent fiduciary in the same position could not conclude that the alternative action (for example, stopping the plan's investment in employer stock or disclosing the nonpublic information) would do more harm than good. In light of this standard, the Court held that the participants' complaint did not satisfy this standard. However, the Court remanded the case again back to the district court to determine whether the participants may amend their complaint "in order to adequately plead a claim for breach of the duty of prudence guided by the standards provided in *Fifth Third*."

Even though this case does not set forth a new standard for plaintiffs to adequately assert a breach of fiduciary duty in an employer stock drop case, it is the first look at how lower courts will need to fully apply the *Dudenhoeffer* decision when evaluating the merits under ERISA of employer stock drop claims. This will continue to be an important case to watch to see how difficult, in practice, it will be for plan participants to meet the pleading requirements set forth in *Dudenhoeffer* in order to survive a motion to dismiss.

***Tackett v. M&G Polymers USA, LLC*: Retiree Health Benefits Case Sent Back to District Court in Light of Supreme Court Decision**

In January 2015, the Supreme Court's decision in *M&G Polymers USA, LLC v. Tackett*, 135 S. Ct. 926 (2015), overturned the so-called "*Yard-Man* inference," which some courts relied on for over three decades to infer intent on the part of bargaining parties to vest retiree health benefits beyond the terms of collective bargaining agreements, often for the lifetime of retirees. In *Tackett*, the Supreme Court held that ordinary principles of contract law should be observed when interpreting collective bargaining agreements and that lifetime vesting of retiree health benefits should not be inferred merely because a contract is silent as to the duration of benefits. This decision by the Supreme Court provided welcome news to employers with retiree health benefit provisions in collective bargaining agreements or other employment contracts. (Please see our Client Alert, "*Supreme Court Rejects* Yard-Man *Inference of Lifetime Vesting of Retiree Health Benefits,*" for a discussion of the Supreme Court's decision.)

In striking down the *Yard-Man* inference, the Supreme Court instructed the Sixth Circuit to reconsider whether retirees of a manufacturing plant acquired by M&G Polymers USA, LLC had a vested right to health benefits using "ordinary principles of contract law." The retirees alleged that M&G Polymers had promised to provide them with lifetime contribution-free health care benefits and, with this promise, had created a vested right to such benefits that extended beyond the term of the collective bargaining agreement.

On January 21, 2016, the Sixth Circuit issued a ruling that punted the case back down to the district court. (See *Tackett v. M&G Polymers USA, LLC*, 6th Cir., No. 12-3329 (January 21, 2016).) The court said that it could not follow the Supreme Court's directive until additional fact-finding had been concluded. The court reasoned that earlier fact-finding in the case was done in the "shadow of *Yard-Man*" and may, therefore, be

incomplete. The Sixth Circuit has directed the district court to consider additional evidence, including what documents made up the parties' agreement and whether extrinsic evidence should be considered, in light of the Supreme Court's holding.

John L. Callo, et al., v. Moen Incorporated: Sixth Circuit Follows Supreme Court's Decision in *Tackett*

Just weeks after issuing its decision to remand *Tackett* to the District Court (see discussion above), the Sixth Circuit rendered another decision on lifetime vesting of retiree health benefits that followed the Supreme Court's decision in *Tackett*. On February 8, 2016, the Sixth Circuit held in *John L. Callo, et al., v. Moen Inc.*, 6th Cir., Nos. 14-3633/3918, that a class of retirees of Moen Inc. was not vested for life in their retiree health benefits.

In *Moen*, the relevant class of retirees was covered under a collective bargaining agreement that provided that certain health benefits "shall continue" for covered individuals who retired from Moen Inc. and their spouses. When Moen attempted to reduce retiree health benefits for this class of individuals in 2013, the retirees sued Moen claiming that their health care benefits had "vested" under the relevant agreement, thereby prohibiting Moen from changing their coverage. The district court, which rendered its decision prior to the Supreme Court's decision in *Tackett*, granted a motion for summary judgment in favor of the Moen retirees. The district court relied on *Yard-Man* to conclude that the collective bargaining agreement required Moen to offer the same health benefits to the retirees for life.

Subsequent to the district court's decision and before the Sixth Circuit's review of the case on appeal, the Supreme Court rendered its decision in *Tackett* that overturned the so-called *Yard-Man* inference. In light of *Tackett*, the Sixth Circuit held in *Moen* that since the agreement covering the Moen retirees was silent as to the duration of the retiree health benefits, ordinary principles of contract law did not support an inference of lifetime vesting of those benefits. Instead, the Sixth Circuit relied upon the general durational clause in the agreement to determine that the Moen retiree's right to the specific retiree health benefits set forth in the agreement terminated as of the date set forth in that clause.

The Sixth Circuit's decision in *Moen* evidences a continuing break from three decades of precedence that originated with *Yard-Man*. While these cases are welcome news for employers with retiree health benefit provisions in collective bargaining agreements and other contacts, employers should be vigilant about specifically defining the duration of any health benefits to be provided to retirees under such agreements.

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