

THE DANGERS OF DISTRIBUTING WITHOUT ADDRESSING THE ERISA PLAN'S CLAIM

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*Last week, on May 1, 2019, the United States District Court for the Eastern District of Pennsylvania rejected the logic of the decision in **Carpenter Tech. Corp. v. Weida**, 300 F. Supp. 3d 663, creating a split within that district and potentially subjecting New York tort victim's \$200,000.00 certificate of deposit and \$62,000.00 van to recapture by the ERISA plan. I want to thank Professor Roger Baron for bringing this case to my attention.*



Just 16 months ago, Judge Stengel, of the Eastern District of Pennsylvania held: “Carpenter Technology cannot collect against the defendant's general assets or his assets jointly owned with his wife. The settlement funds no longer exist as a separate identifiable fund, and thus the relief requested cannot be granted.” *Carpenter Tech. Corp. v. Weida*, 300 F. Supp. 3d 663, 673 (E.D. Pa. 2018).

Last week from the same courthouse, but in a different courtroom, in a case where a New York tort victim had deposited his settlement funds into a joint account with his wife (a co-plaintiff), and then purchased a CD for \$200,000 and a van for \$62,000, Judge Robreno rejected the court's ruling in *Carpenter*.

The holding in *Carpenter* is that the act of depositing a settlement into a joint checking account converts the specifically identifiable fund into general assets against which an equitable lien cannot be attached. *See* 300 F. Supp. 3d at 671-72. Respectfully, the Court is not persuaded that the holding of *Carpenter* rests on firm ground.

Bd. of Trs. of the Nat'l Elevator Indus. Health Ben. Plan v. Goodspeed, 2019 U.S. Dist. LEXIS 73314, at 14 (E.D. Pa. May 1, 2019).

Judge Robreno determined that the United States Supreme Court in *Montanile v. Bd. of Trs. of Nat'l Elevator Indus. Health Benefit Plan*, 136 S. Ct. 651, 657 (2016) required complete dissipation in order to defeat the Plan's equitable lien:

The holding of *Montanile* is clear—only complete dissipation of the specifically identifiable fund on nontraceable items will prevent the imposition of an equitable lien:

‘We hold that, when a participant dissipates the whole settlement on nontraceable items, the fiduciary cannot bring a suit to attach the participant's general assets under § 502(a)(3) because the suit is not one for ‘appropriate equitable relief.’ In this case, it is unclear whether the participant dissipated all of his settlement in this manner, so we remand for further proceedings.’

Thus, to the extent any traceable item exists and is in a defendant's possession, an equitable lien may be attached.

Bd. of Trs. of the Nat'l Elevator Indus. Health Ben. Plan, 136 S. Ct. at 13-14 (quoting *Montanile*).

The Court also rejected the argument that the deposit into a joint account created a tenancy by the entirety, thereby granting protection from creditors in most states, has any application to a plan's equitable lien:

But reliance on authorities addressing debtor-creditor law is inapposite here. The Plan is not a creditor seeking to enforce a judgment against a debtor and to obtain relief from the

debtor's general assets. Rather, the Plan seeks to attach an equitable lien upon traceable funds acquired by Defendant prior to the creation of the purported joint tenancy with rights of survivorship.

This is so because, to the extent an equitable lien attaches to the fund and a defendant has knowledge of that lien, the defendant cannot transfer that property to a joint tenancy or entireties in order to prevent the plaintiff's assertion of rights. The party against which an equitable lien (or constructive trust) is asserted acts as trustee for the fund at issue. That party has no right to the fund, and cannot assert any right to the fund by conveying it to a tenancy by the entireties.

Defendant calculated that under New York law, joint tenancy with rights of survivorship provides the same or similar types of protection as Pennsylvania law on tenancy by the entireties. Even if the protections were the same, as Defendant argues, it makes no difference to the outcome here because, as pointed out above, a tenancy by the entireties in this case would not shield the settlement from the reach of the equitable lien.

Here, both the \$200,000 certificate of deposit and the \$62,000 van are traceable to the settlement fund. Neither of these could be characterized as nontraceable items such as services, food, or travel. The fact that both items first passed through the joint account owned by Defendant and his wife does not confer "nontraceable" status upon these two items.

Id. at 18-19 (internal citations omitted).

Finally, as if rejection were not enough, the Court not only denied the New York tort victim's dissipation arguments, but also granted partial summary judgment, *sua sponte*, in favor of the plan:

There is no genuine dispute of material fact concerning the existence of funds that are traceable to the settlement proceeds against which an equitable lien can be imposed. The Court finds that there are specific funds against which an equitable lien could be attached through traceability, namely the \$200,000 certificate of deposit and the \$62,000 van. Accordingly, Defendant's Motion for Summary Judgment will be denied, and the Plan will be granted partial Summary Judgment.

Id. at 20-21.

This case highlights the danger of distributing a check to the plaintiff in the hopes of winning the *Montanile* dissipation argument later. I have warned that *Montanile* is very fact-specific and is not a "get-out-of-jail-free card."