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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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SEREBOFF ET UX. *v.* MID ATLANTIC MEDICAL SERVICES, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 05–260. Argued March 28, 2006—Decided May 15, 2006

Petitioner Sereboffs are beneficiaries under a health insurance plan administered by respondent Mid Atlantic and covered by the Employee Retirement Income Security Act of 1974 (ERISA). The plan provides for payment of covered medical expenses and has an "Acts of Third Parties" provision. This provision requires a beneficiary who is injured as a result of an act or omission of a third party to reimburse Mid Atlantic for benefits it pays on account of those injuries, if the beneficiary recovers for those injuries from the third party. The Sereboffs were involved in an automobile accident and suffered injuries. The plan paid the couple's medical expenses. The Sereboffs sought compensatory damages for the accident from third parties in state court. After the Sereboffs settled their tort suit, Mid Atlantic filed suit in District Court under §502(a)(3) of ERISA, seeking to collect from the Sereboffs' tort recovery the medical expenses it had paid on the Sereboffs' behalf. The Sereboffs agreed to set aside from their tort recovery a sum equal to the amount Mid Atlantic claimed, and preserve this sum in an investment account pending the outcome of the suit. The court found in Mid Atlantic's favor and ordered the Sereboffs to turn over the amount set aside. The Fourth Circuit affirmed in relevant part, and observed that the Courts of Appeals are divided on the question whether §502(a)(3) authorizes recovery in these circumstances. This Court granted review to resolve this disagreement.

Held: Mid Atlantic's action properly sought "equitable relief" under §502(a)(3). Pp. 3–11.

(a) A fiduciary may bring a civil action under §502(a)(3)(B) "to obtain . . . appropriate equitable relief . . . to enforce . . . the terms of the

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plan." The only question here is whether the relief requested was "equitable." In *Mertens* v. *Hewitt Associates,* 508 U. S. 248, this Court construed §502(a)(3)(B) to authorize only "those categories of relief that were *typically* available in equity," and thus rejected a claim that this Court found sought "nothing other than compensatory *damages*." *Id.,* at 207–208. This Court elaborated on this construction of §502(a)(3) in *Great-West Life & Annuity Ins. Co.* v. *Knudson,* 534 U. S. 204, which involved a provision in an ERISA plan similar to the "Acts of Third Parties" provision in the Sereboffs' plan. Relying on such a provision, Great-West sought equitable restitution of benefits it had paid when Knudson recovered in tort from a third party. In considering whether §502(a)(3)(b) authorized such relief, this Court asked whether the restitutionary remedy Great-West sought would have been equitable in "the days of the divided bench," *id.,* at 212. This Court found that it would not have been equitable, because the funds Great-West sought were not in Knudson's possession but had been placed in a trust under California law. That impediment is not present here. Mid Atlantic sought identifiable funds within the Sereboffs' possession and control—that part of the tort settlement due Mid Atlantic under the ERISA plan and set aside in the investment account. Pp. 3–5.

(b) This Court's case law from the days of the divided bench confirms that Mid Atlantic's claim is equitable. In *Barnes* v. *Alexander,* 232 U. S. 117, attorney Barnes promised two other attorneys "one-third of the contingent fee" he expected in a case, *id.,* at 119. Based on "the familiar rul[e] of equity that a contract to convey a specific object even before it is acquired will make the contractor a trustee as soon as he gets a title to the thing," *id.,* at 121, the Court found that Barnes' undertaking "create[d] a lien" upon the portion of the recovery due him from the client, *ibid.*, which the other attorneys could "follow . . . into [Barnes'] hands" "as soon as [the fund] was identified," *id.,* at 123. The "Acts of Third Parties" provision in the Sereboffs' plan, like Barnes' promise, specifically identified a particular fund distinct from the Sereboffs' general assets, and a particular share of that fund to which Mid Atlantic was entitled. Thus, Mid Atlantic could rely on a "familiar rul[e] of equity" to collect for the medical bills it had paid by following a portion of the recovery "into the [Sereboffs'] hands" "as soon as [the settlement fund] was identified," and imposing on that portion a constructive trust or equitable lien. *Ibid.*

The Sereboffs object that Mid Atlantic's suit would not have satisfied the strict tracing rules that they say accompanied equitable restitution at common law. But *Barnes* confirms that no such tracing requirement applies to equitable liens imposed by agreement or as-

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signment, like that in *Barnes* itself. And *Knudson* did not endorse application of all restitutionary conditions, like the tracing rules the Sereboffs identify, to every action for an equitable lien under §502(a)(3). *Knudson* simply held that equitable restitution was unavailable because the funds Great-West sought were not in Knudson's possession.

The Sereboffs also argue that equitable relief is inappropriate, even under *Barnes*, because at the time they agreed to the plan terms, no fund existed in which they could grant Mid Atlantic an equitable interest. But *Barnes* explicitly disapproved of a rule requiring identification at the time a contract is made of the fund to which a lien specified in the contract attached.

The Sereboffs also claim that the rule announced in *Barnes* applies only to equitable liens claimed under an attorney's contingency fee arrangement. But *Barnes* did not attach any particular significance to the identify of the parties seeking recovery, and other cases of this Court, not involving attorneys' contingency fees, have applied the same "familiar rul[e] of equity" that *Barnes* did. See, *e.g., Walker* v. *Brown,* 165 U. S. 654. Pp. 5–10.

(c) The Sereboffs' contention that the lower courts erred in allowing enforcement of the "Acts of Third Parties" provision, without imposing limitations that would apply to an equitable subrogation action, is rejected. Mid Atlantic's claim is not considered equitable because it is a subrogation claim. Rather, it is considered equitable because it is indistinguishable from an action to enforce an equitable lien established by agreement, of the sort epitomized by *Barnes*. Pp. 10–11.

407 F. 3d 212, affirmed in relevant part.

ROBERTS, C. J., delivered the opinion for a unanimous Court.