APPENDIX

APPENDIX

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APPENDIX A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-1083

[Filed May 21, 2019]

NATIONAL ELEVATOR INDUSTRY HEALTH BENEFIT PLAN BOARD OF TRUSTEES

v.

BERNARD MCLAUGHLIN,
Appellant

Appeal from the United States District Court
for the District of New Jersey
(District Court No. 3-12-cv-04322)
District Judge: Hon. Anne E. Thompson

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
September 27, 2018

Before: SMITH, *Chief Judge*, McKEE, and
RESTREPO, *Circuit Judges*.

App. 2

(Opinion filed: May 21, 2019)

OPINION[*]

McKEE, *Circuit Judge.*

Bernard McLaughlin appeals the order of the District Court denying his motion for relief from a judgment pursuant to Federal Rules of Civil Procedure 60(b)(3) and 60(b)(5). He argues that the District Court abused its discretion by not allowing discovery. For the reasons that follow, we will affirm.

I.[1]

McLaughlin was injured in an all-terrain vehicle accident and received an advance for medical benefits from the Board of Trustees of the National Elevator Industry Health Benefit Plan (the "Plan") on the condition that he reimburse the Plan should he recover from a third party. McLaughlin received a settlement, but refused to reimburse the Plan. The Plan filed suit against McLaughlin to recover funds previously

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[*] This disposition is not an opinion of the full court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

[1] The District Court had jurisdiction over the case pursuant to 29 U.S.C. § 1132. We have appellate jurisdiction pursuant to 28 U.S.C. § 1291.

advanced. The District Court awarded summary judgment in favor of the Plan and this Court affirmed.[2]

Following the appeal, the Plan filed suit against McLaughlin to monetize the lien into a sum certain. The District Court entered judgment in the amount of $45,347.89 in favor of the Plan. McLaughlin moved to vacate the judgment under Rule 60. The District Court denied McLaughlin's motion to vacate. This Court affirmed.[3]

In June 2016, McLaughlin filed a collateral civil action against the Plan challenging the Plan's right to enforce a set-off provision and argued that the Plan was required to reimburse McLaughlin all withheld medical expenses. The District Court granted the Plan's motion to dismiss on *res judicata* grounds. Again, we affirmed.[4]

On August 2, 2017, after the time-frame for McLaughlin to file a petition for certiorari to the United States Supreme Court had expired, the Plan docketed the judgment with the New Jersey Superior Court. Pursuant to that docketing, McLaughlin moved to vacate the order of judgment, styled as a Motion for

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[2] *Bd. of Trs. of the Nat'l Elevator Indus. Health Benefit Plan v. McLaughlin*, 590 F. App'x 154 (3d Cir. 2014) [hereinafter *McLaughlin I*].

[3] *Nat'l Elevator Indus. Health Benefit Plan Bd. of Trs. v. McLaughlin*, 674 F. App'x 189 (3d Cir. 2017) [hereinafter *McLaughlin II*].

[4] *McLaughlin v. Bd. of Trs. of Nat'l Elevator Indus. Health Benefit Plan*, 686 F. App'x 118 (3d Cir. 2017) [hereinafter *McLaughlin III*].

Relief from a Judgment pursuant to Federal Rule of Civil Procedure 60(b)(3) and 60(b)(5). McLaughlin sought relief on two grounds: first, that the Plan committed misconduct by filing the judgment lien in New Jersey state court under Rule 60(b)(3); and second, under Rule 60(b)(5), that the judgment lien had been satisfied through McLaughlin's employer's continued contributions to the Plan.

The District Court held that McLaughlin was not entitled to relief under Rule 60(b)(3) because the docketing of the judgment did not constitute the type of fraud or misconduct required under the rule and the motion was well beyond the one-year limitations period mandated by the federal rules.[5] Moreover, because McLaughlin's motion was untimely, the District Court declined to consider relief under Rule 60(b)(5) or to permit discovery.[6] This appeal followed.

II.

We review a district court's denial of relief under Federal Rule of Civil Procedure 60(b), with the exception of those raised under Rule 60(b)(4), under an abuse of discretion standard.[7] Rule 60(b) authorizes relief from a final judgment on six separate grounds.[8]

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[5] *Bd. of Trs. of Nat'l Elevator Indus. Health Benefit Plan v McLaughlin*, No. 3:12-cv-04322, 2017 WL 6550489, *2–3 (D.N.J. Dec. 20, 2017).

[6] *Id.* at *3.

[7] *Budget Blinds, Inc. v. White*, 536 F.3d 244, 251 (3d Cir. 2008).

[8] *In re Bressman*, 874 F.3d 142, 148 (3d Cir. 2017).

All motions made under Rule 60(b) must be made within a reasonable time of the entry of the order or judgment.[9] Those made under subsection (b)(3) "must be brought within one year of the entry of a final judgment. An appeal does not toll this time period."[10]

McLaughlin waited 11 months after we affirmed the judgment lien and 23 months after the actual entry of the judgment lien to file for relief from the District Court's order. He first attempts to argue that his challenge is nevertheless timely by arguing that the docketing with the New Jersey Superior Court is the appropriate "proceeding" at issue. However, as the District Court explained in its well-reasoned and thorough opinion, the docketing itself is not a proceeding, nor is it the actual final judgment, order, or proceeding from which McLaughlin seeks relief. McLaughlin also attempts to argue that the one-year clock should not have begun ticking until we decided *McLaughlin II*. The argument is futile because an appeal does not toll this time period. Accordingly, relief under Rule 60(b)(3) is time barred.

III.

Alternatively, McLaughlin argues that he is entitled to relief because the judgment lien is satisfied. Where the judgment at issue "has been satisfied, released, or

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[9] Fed. R. Civ. P. 60(c)(1).

[10] *Moolenaar v. Gov't of V.I.*, 822 F.2d 1342, 1346 n. 5 (3d Cir. 1987); *see In re Bressman*, 874 F.3d at 149 (noting that motions based on fraud or misconduct are subject to a one-year cap or period of limitations).

discharged," the federal rules call for relief.[11] Unlike Rule 60(b)(3), Rule 60(b)(5) is not subject to a one-year limitations period. However, a motion filed under Rule 60(b)(5) must nevertheless be filed in a reasonably timely manner.[12]

As noted above, McLaughlin did not pursue relief until 11 months after we affirmed the judgment lien and 23 months after the actual entry of the lien. Because we agree the motion was not filed in a reasonably timely manner, we conclude that the District Court did not abuse its discretion in refusing to consider relief under Rule 60(b)(5) or to permit discovery.

IV.

Accordingly, we will affirm the District Court's well-reasoned order denying relief under Rule 60 and preventing discovery substantially for the reasons explained by the District Court in its December 20, 2017 opinion.

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[11] Fed. R. Civ. P. 60(b)(5).

[12] *See* Fed. R. Civ. P. 60(c)(1).

APPENDIX B

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civ. No. 12-4322

[Filed December 20, 2017]

BOARD OF TRUSTEES OF THE NATIONAL ELEVATOR INDUSTRY HEALTH BENEFIT PLAN,	)
Plaintiff,	)
v.	)
BERNARD MCLAUGHLIN,	)
Defendant.	)

OPINION

THOMPSON, U.S.D.J.

INTRODUCTION

This matter is before the Court upon the Motion for Relief from a Judgment by Defendant Bernard McLaughlin ("Defendant"). (ECF No. 48.) Plaintiff Board of Trustees of the National Elevator Industry Health Benefit Plan ("Plaintiff') opposes. (ECF No. 49.)

The Court has decided the Motion based on the written submissions of the parties and without oral argument pursuant to Local Civil Rule 78.1(b). For the reasons stated herein, Defendant's Motion is denied.

BACKGROUND

Defendant is a participant in Plaintiff's National Elevator Industry Health Benefit Plan ("the Plan"), a self-funded ERISA-governed welfare benefit plan. (Op. at 1, ECF No. 42.) Defendant was injured in an accident in January 2009, causing the Plan to advance $47,590.24 in medical benefits on his behalf. (*Id.)* Defendant filed personal injury claims related to the accident and received a settlement. (*Id.)* The Plan filed a lawsuit in July 2012 against Defendant, seeking to recover the money advanced in medical benefits on his behalf, on the basis that Defendant's agreement required him to reimburse the Plan for any advanced benefits. (*Id.* at 2; Compl., ECF No. 1.)

The Court awarded summary judgment in Plaintiff's favor on January 24, 2014, finding that the agreement gave rise to an equitable lien by agreement. (ECF No. 25.) The Third Circuit affirmed. *See Bd. of Trs. of the Nat'l Elevator Indus. Health Benefit Plan v. McLaughlin,* 590 F. App'x 154 (3d Cir. 2014). The United States Supreme Court denied Defendant's petition for certiorari on that decision on February 23, 2015. On December 18, 2015, Plaintiff moved for judgment as a matter of law, seeking a sum certain lien against Defendant for the unpaid medical bills, on the basis of the summary judgment opinion. (ECF No. 31.) On December 21, 2015, the Court approved the proposed judgment for a sum of $45,347.89 (ECF No.

32), and later that day Defendant moved to vacate the judgment (ECF No. 33).

While that motion was pending, on January 20, 2016, the Supreme Court issued its opinion *in Montanile v. Bd. of Trs. of the Nat'l Elevator Indus. Health Benefit Plan,* 136 S. Ct. 651 (2016). (Op. at 3, ECF No. 42.) *Montanile* held that a plan fiduciary may not enforce a lien against general assets because it is not "appropriate equitable relief" under ERISA § 502(a)(3). 136 S. Ct. at 655. Only an equitable lien by agreement against specifically identified funds that remain in the defendant's possession or against traceable items that the defendant purchased with the funds is permissible. *See id.* at 658-59. On February 17, 2016, this Court denied Defendant's Motion to Vacate the Court's December 21, 2015 Judgment, and Defendant immediately appealed. (ECF Nos. 43, 44.)

The Third Circuit issued its opinion on this appeal on January 6, 2017, affirming the Court's denial of the motion to vacate on the grounds that the intervening law of *Montanile* did not justify relief from judgment under Federal Rule of Civil Procedure 60(b)(6). *Bd. of Trs. of the Nat'l Elevator Indus. Health Benefit Plan v. McLaughlin,* 674 F. App'x 189, 192 (3d Cir. 2017). The Third Circuit also affirmed on the basis of Plaintiff's argument that the order was simply the monetization of a lien that did not contradict ERISA limitations. *Id.* The Court received its mandate a month later on February 6, 2017. (ECF No. 47.)

On August 2, 2017, Plaintiff docketed the Court's December 21, 2015 order monetizing the lien in the Superior Court of New Jersey, Monmouth County.

(Notice to Judgment Debtor, Ex. 3, ECF No. 48-3.) Pursuant to that docketing, Defendant moved to vacate the order of judgment, also styled as a Motion for Relief from a Judgment pursuant to Federal Rule of Civil Procedure 60(b)(3) and Federal Rule of Civil Procedure 60(b)(5). (ECF No. 48.) Plaintiff filed late opposition to Defendant's Motion on November 27, 2017 (ECF No. 49), and on that same day, Defendant replied (ECF No. 50). The Court wrote to the parties indicating its intent to consider Plaintiff's late-filed brief and granting Defendant leave to re-file a responsive brief by December 4, 2017. (ECF No. 51.) Defendant declined to do so. This Motion is presently before the Court.

LEGAL STANDARD

Rule 60(b) enables a party to seek relief from a final judgment based on a limited set of six grounds. *In re Bressman,* 874 F.3d 142, 148 (3d Cir. 2017); *see also Gonzalez v. Crosby,* 545 U.S. 524, 528 (2005). All motions made under Rule 60(b) must be made within a reasonable time of the entry of the order, judgment, or respective proceeding that the motion challenges. Fed. R. Civ. P. 60(c)(1). Motions under Rule 60(b)(1)-(3) are subject to an additional requirement that the motion must be made no more than one year after the judgment or order at issue is entered or following the respective proceeding. *Id.; see In re Bressman,* 874 F.3d at 149 (noting that motions based on fraud or misconduct are subject to a one-year cap or period of limitations); *Hibbert v. Bellmawr Park Mut. Housing Corp.,* 2016 WL 3900764, at *3 (D.N.J. July 18, 2016) (finding untimely a Rule 60(b)(3) motion filed one year and seven months after entry of judgment without any

explanation as to why plaintiff filed late). Notably, "[a]n appeal does not toll this time period." *Lusick v. Lawrence,* 439 F. App'x 97, 99 (3d Cir. 2011) (*citing Moolenaar v. Gov't of the V.I.,* 822 F.2d 1342, 1346 n.5 (3d Cir. 1987)).

Rule 60(b) motions are "extraordinary relief which should be granted only where extraordinary justifying circumstances are present." *Gochin v. Thomas Jefferson Univ.,* 667 F. App'x 365, 366 (3d Cir. 2016) (per curiam) (quoting *Bohus v. Beloff,* 950 F.2d 919, 930 (3d Cir. 1991)). It is within the trial court's sound discretion to grant or deny a motion to vacate judgment. *See Gochin,* 667 F. App'x at 367 ("We review the denial of a Rule 60(b) motion for abuse of discretion.").

DISCUSSION

Defendant seeks relief based on two specific grounds: first, Plaintiff's alleged misconduct in filing the Court's judgment lien in New Jersey state court under Rule 60(b)(3), and second, the fact that the judgment lien has been satisfied through Defendant's employer's continued contributions to the Plan under Rule 60(b)(5).

I. Relief Under Federal Rule of Civil Procedure 60(b)(3)

First, Defendant argues that Plaintiff committed misconduct under Rule 60(b)(3) by violating Supreme Court precedent in *Montanile* and the Third Circuit's decision in this case. Rule 60(b)(3) grants relief for "fraud . . . misrepresentations, or misconduct by an opposing party." Fed. R. Civ. P. 60(b)(3). It is a rigorous

standard, *Neal Asta Funding, Inc. v. Neal,* 2017 WL 3168983, at *1 (D.N.J. July 26, 2017), under which "the movant must establish that the adverse party engaged in fraud or other misconduct, and that this conduct prevented the moving party from fully and fairly presenting his case," *Stridiron v. Stridiron,* 698 F.2d 204, 206 (3d Cir. 1983); *see Gochin,* 667 F. App'x at 366.

Defendant describes the docketing of this Court's December 21, 2015 Order for $45,347.89 in New Jersey state court as a "misrepresent[ation] to the Clerk of the Superior Court that it was a money judgment, contrary to the Third Circuit's instructions." (Def.'s Mot. Vacate at 5-6, ECF No. 48-1.) Specifically, Defendant argues that by operation of N.J.S.A. 2A:16-11 and 2A:16-18, which only allow for docketing of an order to pay money, "[Plaintiff] necessarily had to represent, if only implicitly, that the lien was a money judgment." (Def.'s Mot. Vacate at 8-9.) The Court is not persuaded that this meets the standard required under Rule 60(b)(3). It is true that the Supreme Court has held that specific money judgments are not appropriate or enforceable under ERISA, and in the appeal of this case, the Third Circuit held that the Court's judgment simply monetized a lien-by-agreement, not a money judgment that would contradict *Montanile. McLaughlin,* 614 F. App'x at 192. Even assuming *arguendo* that Plaintiff's conduct is a misrepresentation of the effect of this Court's judgment-lien,[1] Defendant Movant has not met

[1] The New Jersey statute to which Defendant refers provides:

> Every judgment, or order for the payment of money, entered in the Superior Court, Chancery Division, from the time of its entry upon the civil judgment and order docket,

the high burden required to seek relief from fraud, misrepresentation, or misconduct under Rule 60(b)(3). Plaintiff's docketing of this Order has not in any way deprived Defendant of the full or fair representation of his case.

Regardless of whether Defendant's argument has merit under Rule 60(b)(3), it is patently untimely. Defendant has presented this Motion to the Court and styled it as a prayer for relief from the Court's December 21, 2015 Order. (*See* Def.'s Notice of Mot. at 1, ECF No. 48 (moving for an order "granting relief from the Judgment executed by the Hon. Anne E. Thompson, USDJ on December 21, 2015 for being the subject of misconduct for and pursuant to F.R.Cv.P 60(b)(5) for being satisfied").) Therefore, Defendant's attempt in his reply to define the August 2, 2017 docketing of the order with the Superior Court as the "proceeding" at issue is inapposite. (Def.'s Reply at 1-2, ECF No. 50.) While the misconduct alleged is the docketing in August, that act is not itself a proceeding, and it is not the actual final judgment, order, or proceeding from which he seeks relief. The December

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> and every decree or order for the payment of money, of the former court of chancery, from the time it was signed, shall have the force, operation and effect of a judgment of the Superior Court, Law Division, and execution may issue thereon as in other cases.

N.J.S.A. 2A:16-18. The other statute Defendant cites, N.J.S.A. 46:2A-2 notes that liens affecting real property are "entitled to recording." The Court does not delve into the merits of Defendant's claim and the effect of these statutes on the judgment-lien because Defendant fails to meet the standard required by the Federal Rules.

21, 2015 Order date is dispositive. Notably, the Court's Order denying Defendant's previous motion to vacate (ECF No. 44) and the Third Circuit's decision on Defendant's appeal (ECF No. 46) are also irrelevant in analyzing the timeliness of this Motion. *See Lusick,* 439 F. App'x at 99. This Motion was filed nearly two years after the Order from which it seeks relief, and is thus unreasonable and well beyond the one year cap mandated by the Federal Rules.

II. Federal Rule of Civil Procedure 60(b)(5)

Defendant also argues, in the alternative to relief under subsection three, that he is entitled to relief because the judgment lien is satisfied. The Federal Rules call for relief where the judgment at issue "has been satisfied, released, or discharged." Fed. R. Civ. P. 60(b)(5). Under Rule 60(b)(5), district courts may find a judgment partially satisfied. *Savitsky v. Mazzella,* 318 F. App'x 131, 133 (3d Cir. 2009) (citing *BUC Int'l Corp. v. Int'l Yacht Council Ltd.,* 517 F.3d 1271, 1274-75 (11th Cir. 2008); *Kassman v. Am. Univ.,* 546 F.2d 1029, 1033 (D.C. Cir. 1976) for the proposition that Rule 60(b)(5) can be treated as a vehicle to seek credit against a judgment).

Defendant claims that money has been continuously contributed to the Plan by his employers, at a rate of $15.00 per hour from 2014 to 2017 and amounting to nearly $150,000, but he has not received any benefit for said contributions. (Def.'s Mot. Vacate at 6, 10-11.) On this basis, he argues that Plaintiff has received a significant windfall—three times the lien in this case—because it has received contributions without incurring any of the expenses of offering medical benefits

pursuant to the Plan. Thus, the judgment was already satisfied. In response, Plaintiff acknowledges that "[t]he terms of the NEI Plan provide that the Plan may set- off medical benefits that would otherwise be payable on behalf of McLaughlin and his dependents until the Plan has been fully reimbursed for the benefits advanced to McLaughlin for [his] accident." (Pl.'s Opp'n to Def.'s Mot. Vacate at 5-6, ECF No. 49-1.) Plaintiff clarifies that while it has continued to receive contributions to the Plan from Defendant's employers to date, it is incurring risk and providing the benefits for said contributions (*id.* at 6), leaving no additional money to apply as a set-off. Neither party submitted documentary evidence of contributions made not benefits rendered to support or refute this argument. Even Defendant notes that discovery is warranted for the Court to find any alleged contributions attributable to the existing obligation as a set-off. (*See* Def.'s Mot. Vacate at 12.) Without such evidence, the Court cannot grant relief and vacate the judgment for satisfaction, in whole or in part.

The Court, however, will not grant leave for discovery on this issue because Defendant's motion is untimely. Although a motion with respect to Rule 60(b)(5) is not subject to the one year cap, the motion itself should still be filed in a reasonably timely manner. *See* Fed. R. Civ. P. 60(c)(1). Where Defendant alleges that the judgment has been satisfied nearly three times over, resulting in a windfall and unjust enrichment, Defendant could have advanced this argument for relief much sooner than now: eleven months after the Third Circuit affirmed the judgment lien and 23 months after the actual entry of the

judgment lien. (*See* Def.'s Reply at 4 (noting that any money owed to the Plan was "satisfied long ago").) Therefore, the Court declines to consider relief under Rule 60(b)(5) or permit discovery to reach such a conclusion.

CONCLUSION

For the foregoing reasons, Defendant's Motion to Vacate is denied. An appropriate order will follow.

Date: 12-20-17 /s/Anne E. Thompson
ANNE E. THOMPSON, U.S.D.J.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civ. No. 12-4322

[Filed December 20, 2017]

BOARD OF TRUSTEES OF THE NATIONAL ELEVATOR INDUSTRY HEALTH BENEFIT PLAN,	)
Plaintiff,	)
v.	)
BERNARD MCLAUGHLIN,	)
Defendant.	)

ORDER

THOMPSON, U.S.D.J.

For the reasons set forth in this Court's Opinion on this same day,

IT IS on this 20th day of December, 2017,

ORDERED that Defendant Bernard McLaughlin's Motion for Relief from a Judgment (ECF No. 48) is DENIED.

/s/Anne E. Thompson
ANNE E. THOMPSON, U.S.D.J.

APPENDIX C

SUPERIOR COURT OF NEW JERSEY

GLENN A. GRANT, J.A.D.
ACTING ADMINISTRATIVE
DIRECTOR OF THE COURTS

MICHELLE M. SMITH, ESQ.
CLERK OF SUPERIOR
COURT

RICHARD J. HUGHES
JUSTICE COMPLEX
P.O. BOX 971
TRENTON, NEW
JERSEY 08625-0971
(609) 421-6100

NOTICE TO JUDGMENT DEBTOR

TO: Bernard McLaughlin
6 Fredwood Place
Matawan, NJ 07747

Judgment No. **DJ-128370-17**

You are hereby notified that a judgment entered in the United States District Court for the District of New Jersey Trenton Division, has been recorded in the state of New Jersey under the Uniform Enforcement of Foreign Judgment Act on August 2, 2017.

The name and address of the judgment creditor(s) and creditor's attorney (if applicable) is as follows:

Creditors Name: Board of Trustees of the National Elevator Industry Health Benefit Plan

Creditors Address: 19 Campus Blvd., Ste. 200, Newtown Square, PA 19073

Creditors Attorney: Kolb, Clare & Arnold Attn: Rachael B. Banks, Esq.

Attorney Address: 35 Journal Square, Ste. 419, Jersey City, NJ 07306 201-253-1968

Please be advised that a Writ of Execution or other process for enforcement of the judgment may issue 14 days after the date of entry. Any objection to the entry of the judgment should proceed by Motion filed with the Superior Court of New Jersey, Monmouth County. For information on filing the Motion contact the direct filing office in the county of venue.

Any questions concerning the judgment should be directed to the Customer Call Center of the Superior Court Clerk's Office at (609) 421-6100.

Michelle M. Smith, Esq.
Clerk of Superior Court
By:KM

Sent by Regular Mail

* * *

Judgment Search Result Details

[*Fold-Out Exhibit, see next page*]

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Note: If you have pop-up blocker installed, you must disable it to view party details
Search for a Judgment by selecting one of the following tabs below.

Name Judgment # Docket #

Judgment Number: DJ 128370 17- BOARD OF TRUSTEES VS BERNARD MCLAUGHLIN

Filing Location: MONMOUTH	Court: NON	Judgment Status: Open	Status Date: 08/02/2017	Judgment Amount: $45347.89
Court Costs: $0.00	Interest: $0.00	Attorney Fee: $0.00	Other Amount: $0.00	Processing Location: MONMOUTH
Judgment Enter Date: 08/02/2017	Time: 10:30AM	Judgment Filing Date: 12/21/2015		

Party/Debt Summary

Debt ID: 1 Debt Status: Open Debt Amount: $45347.89 Attorney Fee: $0.00 Cost: $0.00 Interest: $0.00 Other Amount: $0.00 Debt Enter Date: 08/02/2017

Name(Last, First MI)	Role	Alternate Names	Party Debt Status	Status Date
MCLAUGHLIN, BERNARD	DEBTOR		Open	08/02/2017
NATIONAL ELEVATOR IN, D HEALTH	CREDITOR		Open	08/02/2017

Document Summary

1.

Document Type	Document File Date	Document Status
	08/02/2017	

Party Name (Party Doc Role)
NATIONAL ELEVATOR IN D HEALTH , (P)
MCLAUGHLIN BERNARD , (T)

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APPENDIX D

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-4108

[Filed April 11, 2017]

BERNARD McLAUGHLIN; J.J.M., a minor through his guardian ad litem REGINA McLAUGHLIN, Appellants	)
v.	)
BOARD OF TRUSTEES OF THE NATIONAL ELEVATOR INDUSTRY HEALTH BENEFIT PLAN	)

On Appeal from the United States District Court
for the District of New Jersey
(No. 3-16-cv-03121)
District Judge: Honorable Anne E. Thompson

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
April 3, 2017

Before: CHAGARES, SCIRICA, and FISHER,
Circuit Judges.

(Opinion Filed: April 11, 2017)

OPINION*

CHAGARES, Circuit Judge.

Plaintiffs Bernard McLaughlin ("McLaughlin") and J.J.M., his minor son proceeding through guardian ad litem Regina McLaughlin, brought this action against the Trustees of the National Elevator Industry Health Benefit Plan ("the Plan"). The Plan moved for dismissal, arguing that McLaughlin and J.J.M.'s claims were barred by claim preclusion or res judicata. The District Court dismissed, and McLaughlin and J.J.M. appealed. For the following reasons, we will affirm.

I.

We write solely for the parties and therefore recite only the facts necessary to our disposition. The Board of Trustees is the administrator of the Plan, a self-funded welfare benefit plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA"). McLaughlin is a participant in the plan. J.J.M is a qualified eligible dependent and a plan beneficiary.

Bernard McLaughlin was injured in an all-terrain vehicle accident in January 2009. The Plan paid a portion of McLaughlin's medical bills resulting from the accident. McLaughlin asserted a third-party liability claim and, in December 2011, that case settled.

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

The Plan then asserted a lien against the settlement proceeds to obtain reimbursement for the benefits previously advanced on McLaughlin's behalf. McLaughlin refused to reimburse the Plan.

The Plan filed suit against McLaughlin in July 2012 to recover the funds previously advanced (hereinafter "McLaughlin I"). While that suit was pending and since some time in 2013, the Plan has asserted a "set-off" against the money it claims McLaughlin owes it, thus refusing to pay unrelated medical expenses incurred by McLaughlin and J.J.M. Appendix ("App.") 21a. After implementing the set-off, the Plan moved for summary judgment. McLaughlin counterclaimed seeking a declaration that the set-off was legally prohibited and that the Plan was not entitled to withhold payment of benefits to McLaughlin or his family. App. 22a. In January 2014, the District Court granted summary judgment in favor of the Plan and denied summary judgment on McLaughlin's counterclaim. The District Court concluded that the language of the Plan gave rise to an equitable lien by agreement but did not adjudicate the amount of the lien. We affirmed this determination in October 2014. Bd. of Trs. of the Nat'l Elevator Indus. Health Benefit Plan v. McLaughlin, 590 F. App'x 154 (3d Cir. 2014).

The Plan returned to the District Court in December 2015 and filed suit against McLaughlin to monetize the lien into a sum certain (hereinafter "McLaughlin II"). The District Court entered judgment in the amount of $45,347.89. App. 43a. McLaughlin moved to vacate the judgment under Federal Rule of Civil Procedure 60. The District Court denied

McLaughlin's motion to vacate. App. 49a. McLaughlin appealed, and we affirmed. Nat'l Elevator Indus. Health Benefit Plan Bd. of Trs. v. McLaughlin, No. 16-1352, 2017 WL 66585, at *1 (3d Cir. Jan. 6, 2017).

McLaughlin and J.J.M. filed the instant lawsuit against the Plan in June 2016 (hereinafter "McLaughlin III"). McLaughlin sought a declaration that the Plan's "set-off" is legally impermissible and that the Plan is required to reimburse McLaughlin and J.J.M. for all withheld medical expenses. App. 23a. The Plan moved to dismiss on res judicata grounds. McLaughlin and J.J.M. opposed the motion and cross-moved for partial summary judgment. The District Court granted the Plan's motion to dismiss, and denied the cross-motion for summary judgment. This timely appeal followed.

III.

The District Court had jurisdiction under 29 U.S.C. § 1132, and we have appellate jurisdiction under 28 U.S.C. § 1291. Our review of the District Court's dismissal under Rule 12(b)(6) is plenary. Fowler v. UPMC Shadyside, 578 F.3d 203, 206 (3d Cir. 2009). Dismissal for failure to state a claim is appropriate when it is obvious, either from the face of the pleading or from other court records, that an affirmative defense such as res judicata will necessarily defeat the claim. See Jones v. Bock, 549 U.S. 199, 215 (2007).

III.

The principal issue on appeal is whether the doctrine of res judicata bars McLaughlin and J.J.M.'s instant claims. McLaughlin and J.J.M. maintain that

res judicata does not apply because J.J.M. was neither party to, nor in privity with, any party to the prior litigation. McLaughlin and J.J.M. also argue that the District Court's December 2015 Order of Judgment constituted a "continuing course of conduct" barring the application of res judicata in this case. We have considered McLaughlin and J.J.M.'s arguments, and for the following reasons, we will affirm the District Court's determination.

A.

Res judicata, also known as claim preclusion, bars a party from initiating a second suit against the same adversary based on the same "cause of action" as the first suit.[1] See In re Mullarkey, 536 F.3d 215, 225 (3d Cir. 2008). A party seeking to invoke res judicata must establish three elements: (1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies, and (3) a subsequent suit based on the same cause of action. Id. "The doctrine of res judicata bars not only claims that were brought in a previous action, but also claims that could have been brought." Id. For the following reasons, the District Court correctly concluded that each of the three res judicata elements is present here.

First, the District Court's grant of summary judgment in favor of the Plan in McLaughlin I

[1] Because this case involves the preclusive effect of a prior federal court determination, we apply federal law principles of collateral estoppel. See Doe v. Hesketh, 828 F.3d 159, 171 (3d Cir. 2016) (citing Paramount Aviation Corp. v. Agusta, 178 F.3d 132, 145 (3d Cir. 1999)).

constitutes a final judgment on the merits for the purposes of res judicata. See Hubicki v. ACF Indus., Inc., 484 F.2d 519, 524 (3d Cir. 1973). That McLaughlin II, a separate matter, was then pending does not alter this conclusion. Cf. Robi v. Five Platters, Inc., 838 F.2d 318, 327 (9th Cir. 1988) (noting that pendency of an appeal does not bar preclusion); Cohen v. Superior Oil Corp., 90 F.2d 810, 812 (3d Cir. 1937) (same).

We next address whether the parties to the instant suit were party to, or in privity with, a party to the prior suit. There is no dispute here that McLaughlin was a party in the original litigation. The only relevant question is therefore whether the District Court properly concluded that J.J.M. was in privity with McLaughlin.

Privity "requires a prior legal or representative relationship between a party to the prior action and the nonparty against whom estoppel is asserted." Nationwide Mut. Fire Ins. Co. v. George V. Hamilton, Inc., 571 F.3d 299, 312 (3d Cir. 2009). The Supreme Court has recognized six traditional categories where nonparty preclusion may be appropriate, including where there is a pre-existing "substantive legal relationship" between the person to be bound and a party to the prior judgment. Id. (citing Taylor v. Sturgell, 553 U.S. 880, 893–95 (2008)). A "substantive legal relationship" as contemplated by the Taylor Court principally refers to one in which "the parties to the first suit are somehow accountable to nonparties who file a subsequent suit raising identical issues." Pelt v. Utah, 539 F.3d 1271, 1290 (10th Cir. 2008).

The District Court concluded here that J.J.M. and McLaughlin maintained a "substantive legal relationship" because J.J.M.'s eligibility for benefits and legal claims were "wholly derivative" of McLaughlin's rights and obligations under the Plan. App. 11a-12a. This emphasis on the dependency of the claims is understandable given the abundance of authority — especially prior to the Supreme Court's decision in Taylor — addressing derivative claims in the context of non-party preclusion generally.[2] Nonetheless, we feel compelled to clarify that the mere existence of a derivative claim does not automatically permit the application of the "substantive legal relationship" exception. Rather, the inquiry "turns on the relationship between the parties and not on the alignment of the types of damages available under the theories of recovery asserted in each proceeding." Baloco v. Drummond Co., 767 F.3d 1229, 1251 n.31 (11th Cir. 2014) (emphasis added). Application of the exception is thus reserved for a variety of "fiduciary,

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[2] There is robust authority relating to non-party preclusion in this context. See, e.g., 18A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure Jurisdiction §§ 4454 (2d ed. 2002) (noting that res judicata is appropriate when "derivative claims held by members of the same family" are brought); see also Vasquez v. Bridgestone/Firestone, Inc., 325 F.3d 665, 677 (5th Cir. 2003) ("Privity exists where, for example, a party's claim is derivative of the original party's claim."); Ferris v. Cuevas, 118 F.3d 122, 131 (2d Cir. 1997) (applying non-party preclusion because the plaintiffs' rights in the subsequent action were "conditioned . . . on" the plaintiffs' rights in the prior action); Terrell v. DeConna, 877 F.2d 1267, 1271 (5th Cir. 1989) (permitting a twice-sued defendant to raise preclusion defenses in the subsequent suit by a spouse raising legally derivative claims).

contractual or property relationship[s] between current and prior litigants," Pelt, 539 F.3d at 1290, including, but not limited to, "preceding and succeeding owners of property, bailee and bailor, and assignee and assignor," Taylor, 553 U.S. at 894.

With this caveat in mind, we agree generally with the District Court that the facts of this case trigger the exception here. Like those relationships traditionally qualifying for the exception, the relationship of a participant and eligible dependent is born of and encompassed within contract, namely the Plan documents.[3] See Nationwide Mut. Fire Ins. Co., 571 F.3d at 310–11 ("[P]rivity has traditionally been

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[3] "ERISA's framework ensures that employee benefit plans be governed by written documents and summary plan descriptions, which are the statutorily established means of informing participants and beneficiaries of the terms of their plan and its benefits." In re Unisys Corp. Retiree Med. Benefit, 58 F.3d 896, 902 (3d Cir. 1995). Although statements in a summary plan "provide communication with beneficiaries about the plan . . . [they] do not themselves constitute the terms of the plan." Cigna Corp. v. Amara, 563 U.S. 421, 438 (2011). Nonetheless, the District Court and the Plan have cited to the language in the Summary Plan Description ("SPD") as the language of the Plan. We, too, adopt this approach. See US Airways, Inc. v. McCutchen, 133 S. Ct. 1537, 1543 n.1 (2013) ("Because everyone in this case has treated the language from the summary description as though it came from the plan, we do so as well."). Moreover, insofar as McLaughlin and J.J.M. now contend that the SPD was not "designated a plan document" and so cannot control here, McLaughlin Reply Br. 1, we deem this argument forfeited because it is raised solely in the reply brief. See Laborers' Int'l Union of N. Am. v. Foster Wheeler Corp., 26 F.3d 375, 398 (3d Cir. 1994) (holding that an argument is not preserved "unless a party raises it in its opening brief").

understood as referring to the existence of a substantive legal relationship, such as by contract, from which it was deemed appropriate to bind one of the contracting parties to the results of the other party's participation in litigation." (emphasis added)). Moreover, McLaughlin and J.J.M. are indeed "accountable" to each other, Pelt, 539 F.3d at 1290, through the explicit terms of the benefits plan, which permit deduction from either for any funds owed to the Plan. See App. 37a (recognizing that the Plan may deduct amounts owed by a participant "from future benefits to which the covered person or an immediate covered family member may otherwise be entitled until the amount due the Plan has been satisfied" (emphasis added)). Their relationship here is thus distinct from that of "mere self-appointed volunteers without authority to bind any other beneficiaries by litigation." Pelt, 539 F.3d at 1291. To the contrary, McLaughlin and J.J.M. are in privity precisely because, by virtue of their preexisting legal relationship, the judgment in McLaughlin I necessarily extinguished any claim J.J.M. may have as to the legal permissibility of the set-off. The District Court therefore did not err in concluding that J.J.M. was in privity with McLaughlin.[4]

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[4] We have considered McLaughlin's and J.J.M.'s arguments to the contrary and consider them lacking in merit. McLaughlin and J.J.M. argue, for instance, that J.J.M.'s interests are "distinct from his father's because the Plan was required to pay [J.J.M.'s] medical benefits independently of his father's." McLaughlin Br. 7. This contention is contradicted by the clear terms of the Plan, however, which permit deduction of funds owed from any plan participant or eligible dependent. App. 37a. McLaughlin and J.J.M. also argue that "the interests of the father and son were not squarely

Third, there is an identity of claims between the prior and subsequent suits. In determining whether there is an identity of claims, "we take a broad view, looking to whether there is an 'essential similarity of the underlying events giving rise to the various legal claims.'" CoreStates Bank, N.A. v. Huls Am., Inc., 176 F.3d 187, 194 (3d Cir. 1999) (quoting United States v. Athlone Indus., Inc., 746 F.2d 977, 984 (3d Cir. 1984)). It is not "dispositive that [a party] asserts a different theory of recovery or seeks different relief in the two actions." Athlone Indus., Inc., 746 F.2d at 984. Rather, we look to see "whether the acts complained of were the same, whether the material facts alleged in each suit were the same, and whether the witnesses and documentation required to prove such allegations were the same." Lubrizol Corp. v. Exxon Corp., 929 F.2d 960, 963 (3d Cir. 1991).

Here, the act complained of — that the Plan breached its fiduciary duty by offsetting benefits otherwise payable to McLaughlin and his family members — was alleged in both the prior and subsequent cases. McLaughlin and J.J.M. concede as much by acknowledging that "the plaintiffs asserted a Counterclaim [in McLaughlin I] seeking relief similar to that requested in the within Complaint." App. 22a. Moreover, the factual allegations required proof

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aligned." McLaughlin Br. 10. That precisely the same relief is sought in both the prior and subsequent litigations undermines this argument. See Baloco, 767 F.3d at 1251 n.32 (affirming res judicata determination in part because, as between the parties and their privies, the "interests in litigating this issue were perfectly aligned").

through the same witnesses and documentation. We thus conclude that there was an identity of claims in this case.

In sum, because each of the three elements of the res judicata analysis is present, the District Court did not err in dismissing on claim preclusion grounds.

B.

McLaughlin and J.J.M. maintain that the judgment in McLaughlin I does not have preclusive effect because the "continuing course of conduct" exception bars application of res judicata. For the following reasons, we do not agree.

The "continuing course of conduct" exception recognizes that "when significant new facts grow out of a continuing course of conduct the issues in a successive suit may fail to constitute the same 'issue' so as to merit preclusive effect." Hawksbill Sea Turtle v. Fed. Emergency Mgmt. Agency, 126 F.3d 461, 477 (3d Cir. 1997); see also Labelle Processing Co. v. Swarrow, 72 F.3d 308, 313–14 (3d Cir. 1995). We have thus held that res judicata does not "bar claims arising subsequent to the entry of judgment and which did not then exist or could not have been sued upon in the prior action." Alexander & Alexander, Inc. v. Van Impe, 787 F.2d 163, 166 (3d Cir. 1986).

The exception invoked here is inapplicable. McLaughlin, through his counterclaim in the first case, sought precisely the same relief that he now seeks with J.J.M. Moreover, McLaughlin and J.J.M. have failed to identify any new facts giving rise to a new claim. To the contrary, any alleged injuries relating to the Plan's set-

off practice were present before McLaughlin filed his counterclaim in McLaughlin I. McLaughlin and J.J.M.'s claims in the instant action therefore arose before the final judgment in McLaughin I issued and "could . . . have been sued upon in the prior action." Van Impe, 787 F.2d at 166. The "continuing course of conduct" exception thus does not apply here.

IV.

For the foregoing reasons, we will affirm the District Court's order dismissing the case.

APPENDIX E

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-1352

[Filed January 6, 2017]

NATIONAL ELEVATOR INDUSTRY HEALTH BENEFIT PLAN BOARD OF TRUSTEES	)
v.	)
BERNARD MCLAUGHLIN, Appellant	)

On Appeal from the United States District Court
for the District of New Jersey
(District Case No. 3-12-cv-04322)
District Judge: Honorable Anne E. Thompson

Argued September, 21 2016

Before: McKEE[*], HARDIMAN, and
RENDELL, Circuit Judges

(Opinion filed: January 6, 2017)

Steven L. Kessel (Argued)
Drazin & Warshaw
25 Reckless Place
P.O. Box 8909
Red Bank, NJ 07701

Counsel for Appellant

John D. Kolb (Argued)
Gibson & Sharps
9420 Bunsen Parkway
Suite 250
Louisville, KY 40223

Counsel for Appellee

O P I N I O N[*]

RENDELL, Circuit Judge:

Bernard McLaughlin appeals from the District Court's order entering Judgment against him in the amount of $45,347.89 in an action commenced by the

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[*] Judge McKee was Chief Judge at the time this appeal was submitted. Judge McKee completed his term as Chief Judge on September 30, 2016.

[*] This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

National Elevator Industry Health Benefit Plan Board of Trustees ("the Plan"). We will affirm.

McLaughlin was injured in an all-terrain vehicle accident in January 2009. The Plan extended him approximately $47,590.24 in benefits for his medical treatment costs. McLaughlin also filed a claim against a third party and subsequently recovered monies by way of settlement. He did not assert medical expenses as part of the claim against the third party. The Plan then sought reimbursement from McLaughlin from the settlement proceeds according to the following Plan provision:

> The Plan has a right to first reimbursement out of any recovery. Acceptance of benefits from the Plan for an injury or illness by a covered person, without any further action by the Plan and/or the covered person, constitutes an agreement that any amounts recovered from another party by award, judgment, settlement or otherwise, and regardless of how the proceeds are characterized, will promptly be applied first to reimburse the Plan in full for benefits advanced by the Plan due to the injury or illness.

A19a.

The Plan subsequently brought suit in the United State District Court for the District of New Jersey and sought "the imposition of a constructive trust and/or equitable lien over identifiable funds in the possession and/or control of [McLaughlin]. No money damages [were] sought . . . ." Complaint at 2, ¶4. McLaughlin urged that he was not obligated to reimburse the Plan

because he had not recovered money for medical bills in the settlement. The District Judge granted summary judgment for the Plan on January 24, 2014 and opined that "[s]ince the Plan's language is clear and the agreement controls, Defendant must reimburse [the Plan] from the Settlement." *Bd. of Trs. of Nat'l Elevator Indus. Health Benefit Plan v. McLaughlin*, No. 12-4322, 2014 WL 284431, at *4 (D.N.J. Jan. 24, 2014).[1]

Thereafter, in December 2015, the Plan sent a letter to the District Judge noting, "We now wish to file a lien against the Defendant for the unpaid medical lien; however the order and judgment from the District Court granting summary judgment in favor of [the Plan] does not mention a sum certain." A26a. It then goes on to state that the "current claim amount is $45,347.89." A26a. It also noted that it advised McLaughlin's counsel of the current amount by letter dated October 8, 2015 and had not received any objection. A26a, A61a. On December 21, 2015, the District Court ordered that judgment in that amount be entered in favor of the Plan.

McLaughlin now makes several arguments in this appeal, but principally challenges the District Court's entry of a "new order for judgment" under Rule 60, McLaughlin Br. 6, notwithstanding the previous "final order" of the District Court. He also urges that ERISA does not authorize entry of a money judgment. Our

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[1] McLaughlin appealed from this order, and we affirmed in a non-precedential opinion. *See Bd. of Trs. of the Nat'l Elevator Indus. Health Benefit Plan v. McLaughlin*, 590 F. App'x 154 (3d Cir. 2014), *cert. denied*, 135 S. Ct. 1405 (2015).

analysis depends in part on how we should characterize what occurred in the District Court and in part on the state of the law at the time judgment was entered.

It should be noted that McLaughlin originally argued in the District Court that since the funds he received had been dissipated, *i.e.*, spent by him, there could be no enforceable lien. The District Court rejected that argument based on our opinion in *Funk v. Cigna*, 648 F.3d 182 (3d Cir. 2011), in which we held that a lien-by-agreement can be enforced notwithstanding the dissipation of the specific fund to which the lien attached. *See Bd. of Trs. of Nat'l Elevator Indus. Health Benefit Plan*, 2014 WL 284431, at *2 n.2. McLaughlin did not appeal that aspect of the original ruling in the District Court in his earlier appeal. We note that *Funk* was clearly controlling at that time.

Here, we must decide what the District Court was doing when it entered judgment in the amount of $45,347.89 on December 21, 2015. McLaughlin asserts that it was entering a personal judgment that is not a valid "equitable remedy" authorized by ERISA. The Plan, on the other hand, contends that the District Court had granted equitable relief as requested in its complaint and thus was simply monetizing the amount of the current lien claim.

We think the Plan has the better argument. While it would seem that such a money judgment would originally be deemed a legal judgment prohibited by ERISA, the District Court was acting pursuant to our opinion in *Funk* which permitted it to enforce a lien-by-agreement against property other than the res to which the lien attached. It follows logically that the District

Court needed to indicate the amount of the lien in order to do so. That, together with the underlying equitable relief requested by the Plan, causes us to view the judgment at issue here as one that merely monetizes the lien and does not run afoul of ERISA.

The parties acknowledge that our ruling in *Funk* has been abrogated by the Supreme Court's opinion in *Montanile v. Bd. of Trs. of Nat'l Elevator Indus. Health Benefit Plan*, 136 S. Ct. 651 (2016), which clarified that in order to be equitable, the lien must attach to a specific fund, and if that specific fund is dissipated, relief against the debtor is no longer equitable. McLaughlin asked the District Court to vacate its order under Rule 60(b) and apply *Montanile*, and on appeal before us he contends the District Court erred in refusing to do so. We reject this argument and will affirm on this issue as well. "[I]ntervening changes in the law rarely justify relief from a final judgment." *Cox v. Horn*, 757 F.3d 113, 121 (3d Cir. 2014). Moreover, McLaughlin has not presented the extraordinary circumstances that would warrant such relief.

Accordingly, we will affirm the District Court's order.

APPENDIX F

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civ. No. 16-3121

[Filed October 13, 2016]

BERNARD MCLAUGHLIN AND JAMES JOSEPH MCLAUGHLIN, a minor, through his g/a/l REGINA MCLAUGHLIN,	)
Plaintiffs,	)
v.	)
BOARD OF TRUSTEES OF THE NATIONAL ELEVATOR INDUSTRY HEALTH BENEFIT PLAN,	)
Defendant.	)

OPINION

THOMPSON, U.S.D.J.

INTRODUCTION

This matter is before the Court upon the motion to dismiss brought by Defendant Board of Trustees of the National Elevator Industry Health Benefit Plan ("Defendant"). (ECF No. 6). Plaintiffs Bernard McLaughlin and James Joseph McLaughlin, a minor, through his guardian ad litem Regina McLaughlin ("Plaintiffs"), oppose the motion and cross-move for summary judgment. (ECF No. 8). The Court has decided the motions based on the written submissions of the parties and without oral argument pursuant to Local Civil Rule 78.1(b). For the reasons stated herein, Defendant's motion will be granted and Plaintiff's cross-motion will be denied.

BACKGROUND

Plaintiff Bernard McLaughlin is a participant in Defendant's National Elevator Industry Health Benefit Plan ("the Plan"), a self-funded ERISA-governed welfare benefit plan. (Pls.' Statement of Material Facts Not in Dispute, ECF No. 8-2 at ¶¶ 1-2). Plaintiff James McLaughlin is Bernard McLaughlin's son and an eligible dependent who is covered under the terms of the plan. (*Id.* at ¶ 3). In January 2009, Bernard McLaughlin was injured in an accident. (*Id.* at ¶ 4). Defendant thereafter paid a portion of Bernard McLaughlin's medical bills arising from treatment for the injuries he sustained in that accident. (*Id.* at ¶ 5). Defendant filed personal injury claims related to the accident against a third party, and in December 2011, Bernard McLaughlin received a settlement. (*Id.* at ¶ 4). Defendant asserted a lien against Bernard McLaughlin's settlement proceeds. Defendant claimed

that, in the event of a third-party settlement, Bernard McLaughlin's agreement with Defendant required him to reimburse Defendant for any benefits advanced on his behalf. (Pls.' Compl. At 2). However, Bernard McLaughlin did not reimburse Defendant for the benefits it had expended. (Pls.' Statement of Material Facts Not in Dispute at ¶ 4). Since some time in 2013, Defendant has asserted a "set-off" against the money it claims Bernard McLaughlin owes to it by refusing to pay medical expenses incurred by Plaintiffs. (Pls.' Compl. At ¶ 10).

Defendant first filed suit against Plaintiff Bernard McLaughlin in July 2012 to recover the funds advanced on his behalf. The parties filed cross-motions for summary judgment, and on January 24, 2014, the Court granted summary judgment to Defendant. (*See Bd. of Tr. of the Nat'l. Elevator Indus. Health Benefit Plan v. McLaughlin,* 12-4322, Opinion, ECF No. 25) (*"McLaughlin I"*). The Court concluded that Defendant successfully established that the language of the Plan gave rise to an equitable lien by agreement, recognized by the Supreme Court as an equitable remedy under ERISA § 502(a)(3). *Id.* Plaintiff Bernard McLaughlin counterclaimed for summary judgment asserting that he was entitled to a declaration that the Plan is not entitled to withhold payment of benefits to Bernard McLaughlin or his family. The Court denied Plaintiff Bernard McLaughlin's counterclaim. *Id.*

Plaintiff Bernard McLaughlin appealed, and on October 1, 2014, the Third Circuit affirmed the Court's grant of summary judgment to Defendant. (*See Bd. of Tr. of the Nat'l. Elevator Indus. Health Benefit Plan v.*

McLaughlin, 590 F. App'x 154 (3d Cir. 2014). Plaintiff Bernard McLaughlin petitioned for certiorari to the United States Supreme Court, but the Supreme Court denied the petition on February 23, 2015. Defendant returned to this Court on December 18, 2015, and filed a lien against Plaintiff Bernard McLaughlin for the unpaid medical bills because the prior order and judgment from the Court granting summary judgment did not mention a sum certain. The Court approved the proposed judgment for a sum of $45,347.89 on December 21, 2015. (*Bd. of Tr. of the Nat'l. Elevator Indus. Health Benefit Plan v. McLaughlin,* 12-4322, Judgment, ECF No. 32).

Plaintiff Bernard McLaughlin then filed a Motion to Vacate the December 21, 2015 Judgment under Federal Rule of Civil Procedure 60.1. While Plaintiff's Motion to Vacate was pending before the Court, on January 20, 2016, the Supreme Court released the opinion in *Montanile v. Bd. of Tr. of the Nat'l. Elevator Indus. Health Benefit Plan,* 136 S. Ct. 651 (2016). *Montanile* held that a plan fiduciary may only enforce an equitable lien by agreement against specifically identified funds that remain in the defendant's possession or against traceable items that the defendant purchased with the funds. *See Montantile v. Bd. of Tr. of Nat'l. Elevator Indus. Health Benefit Plan,* 136 S. Ct. 651 (2016). The Court denied Plaintiff's Motion to Vacate the Court's December 21, 2015 Judgment. (*Bd. of Tr. of the Nat'l. Elevator Indus. Health Benefit Plan v. McLaughlin,* 12-4322, Order, ECF No. 43). The Court's denial of Plaintiff's motion to vacate is currently pending on appeal before the Third Circuit.

On June 1, 2016, Plaintiffs filed the current lawsuit against Defendant. (*"McLaughlin II,"* Civ. No. 16-3121, ECF No. 1). In the Complaint, Plaintiffs seek an order declaring that: (1) Defendant is not entitled to withhold payment of medical benefits as a "set-off" against moneys that Defendant claims are owed to it as a result of Bernard McLaughlin's 2009 accident; and (2) Defendant must reimburse Plaintiffs for all medical expenses they have incurred since Defendant asserted a "set-off" against moneys that Plaintiffs paid as a result of the 2009 accident. (Civ. No 16-3121, ECF No. 4). On August 1, 2016, Defendant moved to dismiss Plaintiffs' complaint on the ground that Plaintiffs' claims are barred by the doctrine of res judicata. (Civ. No. 16-3121, ECF No. 6). Plaintiffs opposed the motion and cross-moved for partial summary judgment declaring that the Plan is not entitled to withhold the payment of medical expenses that it would otherwise be required to pay on behalf of Plaintiffs.

Defendant's motion to dismiss and Plaintiffs' cross-motion for summary judgment are presently before the Court.

LEGAL STANDARDS

I. Summary Judgment

Summary judgment is appropriate if the record shows "that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986). In deciding a motion for summary judgment, a district court considers the facts drawn from "the pleadings,

the discovery and disclosure materials, and any affidavits" and must "view the inferences to be drawn from the underlying facts in the light most favorable to the party opposing the motion." Fed. R. Civ. P. 56(c); *Curley v. Klem,* 298 F.3d 271, 276-77 (3d Cir. 2002) (internal quotations omitted). In resolving a motion for summary judgment, the Court must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby,* 477 U.S. 242, 251-52 (1986). More precisely, summary judgment should be granted if the evidence available would not support a jury verdict in favor of the nonmoving party. *Id.* at 248-49. The Court must grant summary judgment against any party "who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex,* 477 U.S. at 322.

II. Motion to Dismiss

A motion under Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of a complaint. *Kost v. Kozakiewicz,* 1 F.3d 176, 183 (3d Cir. 1993). The defendant bears the burden of showing that no claim has been presented. *Hedges v. United States,* 404 F.3d 744, 750 (3d Cir. 2005). When considering a Rule 12(b)(6) motion, a district court should conduct a three-part analysis. *See Malleus v. George,* 641 F.3d 560, 563 (3d Cir. 2011). "First, the court must 'take note of the elements a plaintiff must plead to state a claim.'" *Id.* (quoting *Ashcroft v. Iqbal,* 56 U.S. 662, 675 (2009)).

Second, the court must accept as true all of a plaintiff's well-pleaded factual allegations and construe the complaint in the light most favorable to the plaintiff. *Fowler v. UPMC Shadyside,* 578 F.3d 203, 210-11 (3d Cir. 2009); *see also Connelly v. Lane Const. Corp.,* No. 14-3792, 2016 WL 106159 (3d Cir. Jan. 11, 2016). However, the court may disregard any conclusory legal allegations. *Fowler,* 578 F.3d at 203. Finally, the court must determine whether the "facts are sufficient to show that plaintiff has a 'plausible claim for relief.'" *Id.* at 211 (quoting *Iqbal*, 556 U.S. at 679). If the complaint does not demonstrate more than a "mere possibility of misconduct," the complaint must be dismissed. *See Gelman v. State Farm Mut. Auto. Ins. Co.,* 583 F.3d 187, 190 (3d Cir. 2009) (quoting *Iqbal*, 556 U.S. at 679).

ANALYSIS

There are two main issues that the Court must address: (1) whether Defendant's motion to dismiss is procedurally proper; and (2) whether res judicata bars Plaintiffs' claims. The Court will address each in turn.

I. Whether Defendant's Motion to Dismiss Is Procedurally Proper

The Court will first address Plaintiffs' argument that Defendant's motion to dismiss is procedurally improper. Plaintiffs argue that Defendant's motion to dismiss based on res judicata should have been brought as a summary judgment motion rather than as a motion to dismiss. Fed. R. Civ. P. 8(c) specifically lists res judicata as an affirmative defense. The Third Circuit has explained that such an affirmative defense could properly be the grounds for a motion to dismiss

for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6), if the application of res judicata is apparent on the face of the complaint. *Ryocline Prods., Inc. v. C&W Unlimited,* 109 F.3d 883, 886 (3d Cir. 1997). However, the Third Circuit has also noted "To resolve a 12(b)(6) motion, a court may properly look at public records, including judicial proceedings, in addition to the allegations in the complaint. Specifically, on a motion to dismiss, we may take judicial notice of another court's opinion–not for the truth of the facts recited therein, but for the existence of the opinion, which is not subject to reasonable dispute over its authenticity." *S. Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Grp., Ltd.,* 181 F.3d 410, 426 (3d Cir. 1999) (citations omitted).

Here, Defendant brings this motion to dismiss based on the doctrine of res judicata. Specifically, Defendant claims that Plaintiffs' suit is barred because this very court previously issued a valid final judgment on the merits with respect to Plaintiffs' claims. (Def.'s Mot. Dismiss, ECF No. 6 at 8). Plaintiffs claim that Defendant's res judicata argument is "not apparent solely on the face of the complaint," and as a result the motion to dismiss is improper (Pls.' Opp'n. Br., ECF No. 8 at 3). Plaintiffs' argument is misplaced. The Court takes judicial notice of its prior decision in *McLaughlin I,* where this Court granted summary judgment to Defendant and dismissed Plaintiff Bernard McLaughlin's counterclaim. By examining both this Court's previous decision and the pleadings in this case, the Defendant's res judicata argument is plainly apparent. Therefore, Defendant's motion to

dismiss is procedurally proper and Defendant was not required to bring the motion as a summary judgment motion.

II. Res Judicata

The Court must next decide if res judicata bars Plaintiffs' claims in the instant case. The doctrine of res judicata mandates a subsequent suit be barred if there has been: (1) a final judgment on the merits in a prior suit; (2) based on the same cause of action; (3) between the same parties or their privies. *Labelle Processing Co. v. Swarrow,* 72 F.3d 308, 313 (3d Cir. 1995). "If these three factors are present, a claim that was or could have been raised previously must be dismissed as precluded." *CoreStates Bank, N.A. v. Huls Am., Inc.,* 176 F.3d 187, 194 (3d Cir. 1999).

a. Final Judgment on the Merits in a Prior Suit

The first factor is whether there has been a final judgment on the merits in a prior suit. The Third Circuit has stated that summary judgment is a final judgment on the merits for the purposes of res judicata. *Hubicki v. ACF Indus., Inc.,* 484 F.2d 519, 524 (3d Cir. 1973). This Court previously granted summary judgment in favor of Defendant and denied a counterclaim brought by Plaintiff Bernard McLaughlin on summary judgment in *McLaughlin I.* (*McLaughlin I,* 12-4322, Opinion, ECF No. 25). Additionally, the fact that a judgment has been appealed does not affect the finality of the judgment for purposes of res judicata. *Huron Holding Co. v. Lincoln Mine Operating Co.,* 312 U.S. 183, 189 (appeal does not "detract

from...decisiveness and finality" of judgment). Thus, Plaintiffs appeal of this Court's denial of its Motion to Vacate the December 21, 2015 Order in *McLaughlin I* does not affect the application of res judicata here. This Court's previous grant of summary judgment in favor of Defendant and denial of Bernard McLaughlin's counterclaim in *McLaughlin I* qualifies as a final judgment on the merits in a prior suit for the purposes of res judicata.

b. Same Cause of Action

The second factor is whether the prior suit and the subsequent suit are based on the same cause of action. The Third Circuit has explained that it takes a "broad view" in deciding whether two suits are based on the same cause of action. *CoreStates Bank, N.A.,* 176 F.3d at 194. To make this determination, courts look to "whether there is an essential similarity of the underlying events giving rise to the various legal claims." *Id.* (quoting *United States v. Athlone Indus., Inc.*, 746 F.2d 977, 984 (3d Cir. 1984)). Additionally, the Third Circuit has noted that it considers "whether the acts complained of were the same, whether the material facts alleged in each suit were the same, and whether the witnesses and documentation required to prove such allegations were the same." *Lubrizol Corp. v. Exxon Corp.,* 929 F.2d 960, 963 (3d Cir. 1991) (citations omitted). A difference in the theory of recovery or relief sought is not dispositive of whether two suits are based on the same cause of action for purposes of res judicata. *Athlone,* 746 F .2d at 984.

Both the complaint in this case and this Court's previous judgment in *McLaughlin I* are based on the

same material facts. In both cases, Plaintiff Bernard McLaughlin alleges he was injured in an ATV accident and that Defendant paid medical benefits incurred as a result of the accident. Additionally, it is alleged that Bernard McLaughlin received a monetary settlement from a third party in connection with the accident, and Defendant demanded reimbursement from Bernard McLaughlin for the medical expenses it paid on his behalf. Bernard McLaughlin failed to reimburse Defendant, and Defendant began deducting medical benefits incurred by Bernard McLaughlin and his dependent James McLaughlin from the amounts owed Defendant. The Court is persuaded that the material facts are extremely similar in both cases.

Additionally, the acts complained of, namely the withholding of benefits from Bernard McLaughlin and James McLaughlin, are precisely the same in both cases. Further, the Court is persuaded that the witnesses and documentation required to prove each claim are also similar. Therefore, the second factor of the Court's res judicata analysis is satisfied.

c. Same Parties or Their Privies

The third factor is whether the subsequent suit involves the same parties, or those in privity with the same parties, as the original suit. Relying on the Supreme Court decision in *Taylor v. Sturgell,* 553 U.S. 880 (2008), the Third Circuit has recognized six situations where nonparty preclusion may be appropriate:

> (1)the nonparty agrees to be bound by the determination of issues in an action between

> others; (2) a substantive legal relationship i.e. traditional privity – exists that binds the nonparty; (3) the nonparty was "adequately represented by someone with the same interests who [wa]s a party"; (4) the nonparty assumes control over the litigation in which the judgment is rendered; (5) the nonparty attempts to bring suit as the designated representative of someone who was a party in the prior litigation; and (6) the nonparty falls under a special statutory scheme that "expressly forecloses successive litigation by nonlitigants."

Nationwide Mut. Fire Ins., Co. v. George V. Hamilton, Inc., 571 F.3d 299, 312 (3d Cir. 2009). In *Nationwide,* the Third Circuit used these six factors to determine if privity existed for the purposes of collateral estoppel. *Id.* The Third Circuit has also applied these factors to determine if privity exists for purposes of res judicata. *Radovich v. L.P. YA Glob. Investments, L.P.,* 570 F. App'x 203, 206-08 (3d Cir. 2014).

Here, the parties do not dispute that Plaintiff Bernard McLaughlin was the Defendant in *McLaughlin I.* However, James McLaughlin was not a party in *McLaughlin I.* Defendant argues that James McLaughlin (Bernard McLaughlin's son and the other named Plaintiff in this case) was in privity with Bernard McLaughlin. Plaintiffs argue that James McLaughlin was not in privity with any party to the prior suit, and thus, res judicata cannot apply.

The Court is persuaded that the second form of privity cited in *Nationwide* exists here. James

McLaughlin was in privity with Bernard McLaughlin due to the substantive legal relationship that existed between the two, namely the relationship of participant and eligible dependent in a health benefit plan. James McLaughlin's right to receive benefits from the Plan derives entirely from Bernard McLaughlin's participation in the Plan. James McLaughlin's claim that the plan is not entitled to withhold benefits from him is also wholly derivative of Bernard McLaughlin's participation in the plan. This substantive legal relationship between James and Bernard McLaughlin sufficiently aligned James McLaughlin's interest with Bernard McLaughlin's so as to justify binding James McLaughlin by the outcome of *McLaughlin I*. The Court finds that James McLaughlin and Bernard McLaughlin were in privity for purposes of res judicata. Therefore, the third and final element of res judicata is satisfied here.

d. Applicability of an Exception to Res Judicata

The next issue the Court must consider is whether an exception to res judicata applies in this case. The Third Circuit has noted that res judicata applies "only to claims arising prior to the entry of judgment," and that res judicata does not "bar claims arising subsequent to the entry of judgment and which did not then exist or could not have been sued upon in the prior action." *Alexander & Alexander, Inc. v. Van Impe,* 787 F.2d 163, 166 (3d Cir. 1986).

Here, Plaintiffs argue that this Court's December 21, 2015 Order, which imposed personal liability on Bernard McLaughlin for a sum certain, constitutes a

"continuing course of conduct" that blocks the application of res judicata in this case. (Pls.' Opp'n. Br., ECF No. 8 at 9). Plaintiffs argue that the rights and liabilities of the parties were not fixed until the December 21, 2015 Order, and thus res judicata could not bar claims arising prior to the entry of that Order. (Pls.' Opp'n. Br., ECF No. 8 at 12). This argument is misplaced. Defendant began offsetting the Plaintiffs' benefits in 2013. That same year, Plaintiff filed his counterclaim in *McLaughlin I* alleging that Defendant violated its fiduciary duty by offsetting benefits payable to Bernard McLaughlin by the amounts owed to Defendant. This Court then granted summary judgment to Defendant and denied Plaintiff Bernard McLaughlin's claim on January 24, 2014. As previously discussed, this constitutes a final judgment for purposes of res judicata. In this instant case, Plaintiffs seek the same relief that was previously sought in *McLaughlin I,* namely a judgment that Defendant is not entitled to claim such an offset and withhold Plaintiffs benefits. As a result, the Court finds that Plaintiffs' claims arose prior to the entry of judgment in the prior suit, and this exception to res judicata does not apply here.

e. Effect of *Montanile* Decision on Application of Res Judicata

Next, the Court must address whether the Supreme Court's decision in *Montanile* has any effect on the application of res judicata. The Supreme Court has stated that the res judicata consequences of a final judgment are not altered, "by the fact that the judgment may have been wrong or rested on a legal

principle subsequently overruled in another case." *Federated Dept. Stores, Inc. v. Moitie,* 452 U.S. 394, 398 (1981). Further, the Supreme Court has noted, "A judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same cause [of action]." *Id.* (quoting *Baltimore S.S. Co. v. Phillips,* 274 U.S. 316, 325 (1927).

Montanile was decided on January 20, 2016, after this Court's decision in *McLaughlin I* on January 24, 2014. This Court's decision in *McLaughlin I* was a final judgment on the merits and thus, the res judicata consequences of it were not altered by *Montanile.* Plaintiffs' claims are barred by the doctrine of res judicata.

f. Whether the Summary Plan Description Authorizes the "Set-Off"

Plaintiffs argue that Defendants are not permitted to claim a "set-off' because it has failed to point to a plan document that authorizes it to do so. The Supreme Court has recognized that statements in a Summary Plan Description ("SPD"), "provide communication with beneficiaries *about* the plan, but ... do not themselves constitute the *terms* of the plan." *Cigna Corp. v. Amara,* 131 S. Ct. 1866, 1878 (2011). If the parties do not dispute that a SPD constitutes the terms of a plan, however, a Court may treat a SPD as if it were the plan itself. *See US Airways, Inc. v. McCutchen,* 133 S. Ct. 1537 (2013); *Bd. of Tr. of the Nat'l. Elevator Indus. Health Benefit Plan v. McLaughlin,* 590 F. App'x 154 (3d Cir. 2014).

In this case, the parties disagree over whether the terms of the Plan authorize Defendant to claim a "set-off." However, whether the terms of the Plan authorize Defendant to claim a "set-off" today is irrelevant to determining whether res judicata bars Plaintiffs' claim. The Court need not address this issue to decide this motion. Plaintiffs' claims are barred by res judicata.

III. Plaintiffs' Cross-Motion for Summary Judgment

Plaintiffs cross-move for summary judgment seeking a judgment "declaring that as a matter of law, the Plan is not entitled to assert a set-off of its claim against payment of medical expenses that it would otherwise be required under the terms of the Plan to pay on behalf of the McLaughlin family." (Pis.' Opp'n. Br., ECF No. 8 at 2). For the reasons stated above, Plaintiffs' claims are barred by the doctrine of res judicata. Therefore, the complaint is dismissed and Plaintiffs cannot prevail on this claim.

CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss will be granted, and Plaintiffs' cross-motion for summary judgment will be denied. An appropriate order will follow.

/s/Anne E. Thompson
ANNE E. THOMPSON, U.S.D.J.

Date: October 12, 2016

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civ. No. 16-3121

[Filed October 13, 2016]

BERNARD MCLAUGHLIN AND JAMES JOSEPH MCLAUGHLIN, a minor, through his g/a/l REGINA MCLAUGHLIN,	)
Plaintiffs,	)
v.	)
BOARD OF TRUSTEES OF THE NATIONAL ELEVATOR INDUSTRY HEALTH BENEFIT PLAN,	)
Defendant.	)

ORDER

THOMPSON, U.S.D.J.

For the reasons stated in this Court's Opinion on this same day,

IT IS, on this 12th day of October, 2016,

ORDERED that Defendant Board of Trustees of the National Elevator Industry Health Benefit Plan's

Motion to Dismiss (ECF No. 6) is GRANTED; and it is further

ORDERED that Plaintiff Bernard McLaughlin and James Joseph McLaughlin's Cross-motion for Summary Judgment (ECF No. 8) is DENIED; and it is further

ORDERED that Plaintiff Bernard McLaughlin and James Joseph McLaughlin's Complaint (ECF No. 4) is DISMISSED.

/s/ Anne E. Thompson
ANNE E. THOMPSON, U.S.D.J.

APPENDIX G

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civ. No. 12-4322

[Filed February 17, 2016]

BOARD OF TRUSTEES OF THE NATIONAL ELEVATOR INDUSTRY HEALTH BENEFIT PLAN,	)
Plaintiff,	)
v.	)
BERNARD MCLAUGHLIN,	)
Defendant.	)

OPINION

THOMPSON, U.S.D.J.

This matter comes before the Court upon the Motion of Defendant Bernard McLaughlin ("Defendant") to Vacate the December 21, 2015 Judgment of this Court clarifying the Court's prior judgment with a sum certain. (ECF Nos. 33, 40).

Plaintiff Board of Trustees of the National Elevator Industry Health Benefit Plan ("Plaintiff") opposes. (ECF No. 41). The Court has issued the Opinion below based upon the written submissions of the parties and oral argument. For the reasons stated herein, Defendant's Motion will be denied.

BACKGROUND

Defendant is a participant in Plaintiff's National Elevator Industry Health Benefit Plan ("the Plan"), a self-funded ERISA-governed multi-employer employee welfare benefit plan. In January 2009, Defendant was injured in an accident, and the Plan thereafter advanced at least $47,590.24 in medical benefits on his behalf. Defendant filed personal injury claims related to the accident against a third party, and in December 2011, Defendant received a settlement. In the event of a third-party settlement, Defendant's agreement with the Plan required him to reimburse the Plan for any benefits advanced on his behalf. However, despite the fact that Defendant received compensation from a third party, he refused to reimburse the Plan for the benefits the Plan had expended.

Plaintiff filed suit against Defendant in July 2012 to recover the funds advanced on Defendant's behalf. On January 24, 2014, the Court granted summary judgment to Plaintiff. The Court concluded that Plaintiff successfully established that the language of the Plan gave rise to an equitable lien by agreement, recognized by the Supreme Court as an equitable remedy under ERISA § 502(a)(3). The Court also held that New Jersey's Collateral Source Statute, N.J. Stat. Ann. § 2A:15-97, which Defendant argued prohibited

him from recovering medical expenses from the third party, was preempted by ERISA and that, in any event, the language of the Plan controlled.

Defendant appealed, and on October 1, 2014, the Third Circuit affirmed the Court's grant of summary judgment to Plaintiff. Defendant petitioned for certiorari to the United States Supreme Court, but the Supreme Court denied the petition on February 23, 2015. Plaintiff returned to this Court on December 18, 2015, stating that it wished to file a lien against Defendant for the unpaid medical bills, but that the order and judgment from the Court granting summary judgment did not mention a sum certain. Plaintiff noted that it had paid bills totaling $61,973.32, but requested $45,347.89 in light of the original amount claimed in the filings in this Court and certain set-offs that had occurred. Given the proceedings in the Third Circuit and the Supreme Court, as well as the fact that the sum requested matched the amount originally claimed, the Court approved the proposed judgment for a sum of $45,347.89 on December 21, 2015.

Later that day, Defendant filed a Motion to Vacate the December 21, 2015 Judgment under Federal Rule of Civil Procedure 60.[1] Defendant argued that (1) the amount of the final judgment should be modified to include additional set-offs; (2) the proposed judgment was not properly presented to the Court by way of a

[1] Defendant does not specify which section of Rule 60 forms the basis of his Motion. The Court will treat Defendant's Motion as a motion under the catchall provision, Rule 60(b)(6), as none of the other provisions appear to provide a basis for Defendant's Motion. *See* Fed. R. Civ. Pro. 60(b).

formal motion; and (3) Plaintiff's request for a money judgment was not permitted under ERISA's restriction that the District Courts may only grant equitable relief to enforce the terms of an ERISA plan.

On January 20, 2016, the Supreme Court released the opinion in *Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan*, 136 S. Ct. 651 (2016). Defendant supplemented his Motion with an additional argument that the holding in *Montanile* requires the Court to vacate its prior judgment awarding Plaintiff $45,347.89. *Montanile* held that a plan fiduciary may only enforce an equitable lien by agreement against specifically identified funds that remain in the defendant's possession or against traceable items that the defendant purchased with the funds. Defendant maintains that Plaintiff impermissibly seeks a lien against his general assets, because the fund from the settlement no longer exists and was spent on nontraceable items.

This Motion to Vacate is presently before the Court.

DISCUSSION

Rule 60(b) allows a party to seek relief from a final judgment under a limited set of circumstances, including fraud, mistake, and newly discovered evidence. *Gonzalez v. Crosby*, 545 U.S. 524, 528 (2005). Rule 60(b)(6) provides a catchall provision, permitting relief for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). However, a party seeking relief under the catchall provision "must demonstrate the existence of 'extraordinary circumstances' that justify reopening

the judgment." *Budget Blinds, Inc. v. White*, 536 F.3d 244, 255 (3d Cir. 2008). "[I]ntervening changes in the law *rarely* justify relief from final judgments under 60(b)(6)." *Cox v. Horn*, 757 F.3d 113, 121 (3d Cir. 2014), *cert. denied sub nom. Wetzel v. Cox*, 135 S. Ct. 1548 (2015); *see also Reform Party of Allegheny Cnty. v. Allegheny Cnty. Dep't of Elections,* 174 F.3d 305, 311 (3d Cir. 1999); *Morris v. Horn,* 187 F.3d 333, 341 (3d Cir. 1999).

Here, Defendant has failed to demonstrate the existence of extraordinary circumstances that would justify vacating the judgment and reopening this case. Defendant argues that the intervening change of law requires this Court to vacate its prior judgment. However, as noted above, Third Circuit precedent states that an intervening change in the law is *rarely* sufficient to justify relief from a final judgment. Nor do Defendant's prior arguments as to why the judgment should be vacated present extraordinary circumstances, as they essentially reargue parts of the case that were already litigated. As to Defendant's assertion that the judgment was not presented by way of a formal motion, which would have allowed Defendant to oppose the judgment, Defendant was given the opportunity to oppose the motion in oral argument and through subsequent briefing. (*See* ECF No. 40).

Moreover, the Court finds that the equities of this case weigh against vacating the judgment. All of the issues that were appealed have been fully and fairly litigated. The Third Circuit affirmed this Court's judgment, and the Supreme Court declined to issue a

writ of certiorari. Defendant will not be granted a second bite at the apple. Defendant's agreement with the Plan required him to reimburse the Plan with any settlement proceeds he received. After receiving a settlement, seemingly structured to avoid reimbursing the Plan, Defendant then refused to comply with his obligation to reimburse the Plan. Were the Court to vacate its prior judgment, Defendant would essentially recover twice. Defendant would also be rewarded for his efforts to circumvent his binding agreement with the Plan.

In similar circumstances, the Third Circuit has held that a district court is within its discretion in rejecting a Rule 60(b)(6) motion. *Coltec Indus., Inc. v. Hobgood*, 280 F.3d 262, 273 (3d Cir. 2002) (finding that the district court did not abuse its discretion in rejecting a Rule 60(b)(6) motion where the party advancing the motion was trying to escape the effects of a bargain it regretted in hindsight). Therefore, the Court will deny Defendant's Motion.

CONCLUSION

For the reasons above, Defendant's Motion to Vacate the Court's December 21, 2015 Judgment will be denied. A corresponding Order follows.

/s/ Anne E. Thompson
Anne E. Thompson, U.S.D.J.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civ. No. 12-4322

[Filed February 17, 2016]

BOARD OF TRUSTEES OF THE NATIONAL ELEVATOR INDUSTRY HEALTH BENEFIT PLAN,	)
Plaintiff,	)
v.	)
BERNARD MCLAUGHLIN,	)
Defendant.	)

ORDER

THOMPSON, U.S.D.J.

For the reasons set forth in the Opinion issued on this same day,

IT IS, on this 16th day of February, 2016,

ORDERED that Defendant Bernard McLaughlin's Motion to Vacate the Court's December 21, 2015 Judgment (ECF Nos. 33, 40) is DENIED.

/s/ Anne E. Thompson
Anne E. Thompson, U.S.D.J.

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
TRENTON DIVISION

CIVIL ACTION
CASE NO. 3:12-CV-4322-AET-TJB

[Filed December 21, 2015]

BOARD OF TRUSTEES OF THE NATIONAL ELEVATOR INDUSTRY HEALTH BENEFIT PLAN	)
Plaintiff,	)
v.	)
BERNARD MCLAUGHLIN	)
Defendant.	)

JUDGMENT

Now, on application of Gibson & sharps, PSC, attorneys for Plaintiff, this action having been decided in favor of Plaintiff the Board of Trustees of the National Elevator Health Benefit Plan on motion for Summary Judgment on January 24, 2014, affirmed by the Third Circuit Court of Appeals on September 9,

2014 and certiorari denied by the US Supreme Court on February 23, 2015; and no further appeals pending; and upon the annexed exhibits duly considered and for good cause appearing;

IT IS on this, 21st day of December, 2015;

ORDERED that Plaintiff the Board of Trustees of the National Elevator Industry Health Benefit Plan recover from the Defendant Bernard McLaughlin the amount of forty-five thousand three hundred forty-seven dollars and eighty-nine cents ($45,347.89); and it is

ORDERED that Judgment be entered in favor of Plaintiff Board of Trustees of the National Elevator Industry Health Benefit Plan.

Anne E. Thompson
Anne E. Thompson, USDJ

APPENDIX I

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 14-1308

[Filed October 1, 2014]

BOARD OF TRUSTEES OF THE NATIONAL ELEVATOR INDUSTRY HEALTH BENEFIT PLAN

v.

BERNARD MCLAUGHLIN, Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY
(D.C. Civ. No. 3-12-cv-04322)
District Judge: Honorable Anne E. Thompson

Submitted Under Third Circuit LAR 34.1(a)
September 9, 2014

Before: RENDELL, GREENAWAY, JR. and BARRY, Circuit Judges

(Filed: October 1, 2014)

OPINION

BARRY, Circuit Judge

Appellant Bernard McLaughlin appeals the order of the District Court granting summary judgment in favor of the Board of Trustees of the National Elevator Industry Health Benefit Plan (the "Board") on the Board's claim for reimbursement of money paid by the National Elevator Industry Health Benefit Plan (the "Plan") toward McLaughlin's medical expenses. We will affirm.

I.

The facts of this case are undisputed. In broad summary, McLaughlin is a participant in the Plan, a self-funded, ERISA-governed, multi-employer employee welfare benefit plan of which the Board is a fiduciary. In January 2009, McLaughlin was injured in an ATV ("all-terrain vehicle") accident, and the Plan thereafter paid approximately $47,590.24 in medical benefits on his behalf. McLaughlin filed personal injury claims against a third party, and, in December 2011, that case settled.

The Plan language[1] provides as follows:

> The Plan has a right to first reimbursement out of any recovery. Acceptance of benefits from the Plan for an injury or illness by a covered person, without any further action by the Plan and/or the covered person, constitutes an agreement that any amounts recovered from another party by award, judgment, settlement or otherwise, and regardless of how the proceeds are characterized, will promptly be applied first to reimburse the Plan in full for benefits advanced by the Plan due to the injury or illness . . . .

(App. at 21.) The Plan also provides that it "reserves the right to make all decisions with respect to its rights of subrogation and recovery," and that it "has the right to treat any benefits provided as an advance and to deduct such amounts from future benefits to which the covered person or an immediate covered family member may otherwise be entitled until the amount due the Plan has been satisfied." (Id. at 22.)

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[1] The parties cite to language in the Summary Plan Description as the language of the Plan. As the Supreme Court has recognized, statements in a summary plan description "provide communications with beneficiaries *about* the plan, but . . . do not themselves constitute the *terms* of the plan." Cigna Corp. v. Amara, 131 S.Ct. 1866, 1878 (2011). Because the parties have consistently treated this language as if it came from the Plan, however, we may do so as well. US Airways, Inc. v. McCutchen, 133 S.Ct. 1537, 1543 n.1 (2013) ("Because everyone in this case has treated the language from the summary description as though it came from the plan, we do so as well.").

Following unsuccessful attempts to collect reimbursement from McLaughlin, the Plan filed this action in July 2012 pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3). McLaughlin filed a counterclaim, alleging that after the tort claims settled, the Plan unlawfully refused to pay medical expenses for himself and his family unrelated to the ATV accident. The parties filed cross motions for summary judgment, and, on January 24, 2014, the District Court granted summary judgment to the Board. The Court concluded that the Board successfully established that the language of the Plan gave rise to an "equitable lien by agreement," recognized by the Supreme Court as an equitable remedy under ERISA § 502(a)(3) in Sereboff v. Mid Atl. Med. Servs, Inc., 547 U.S. 356 (2006). The Court also held that New Jersey's Collateral Source Statute (the "NJCSS"), N.J. Stat. Ann. § 2A:15-97, which McLaughlin argued prohibited him from recovering medical expenses from the third party, was pre-empted by ERISA and that, in any event, the language of the Plan controlled. The Court rejected, as well, McLaughlin's affirmative defense of laches and found McLaughlin's argument that he had no duty to reimburse the plan to be "unpersuasive." (App. at 7 n.3.)

McLaughlin now appeals, arguing that the District Court erred in concluding that the Plan had an equitable lien against his tort recovery because there was no nexus between the funds received by him (which excluded compensation for medical expenses) and the funds expended by the Plan (which were solely for medical expenses). McLaughlin also argues that the

Court erred in concluding that the NJCSS was pre-empted by ERISA and in rejecting his other arguments.

II.

The District Court had jurisdiction pursuant to 29 U.S.C. § 1132(e)(1), and we have jurisdiction pursuant to 28 U.S.C. § 1291. We exercise plenary review of a district court's decision granting summary judgment. Funk v. Cigna Gr. Ins., 648 F.3d 182, 190 (3d Cir. 2011). Summary judgment is appropriate where the movant "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

III.

ERISA § 502(a)(3) provides that a fiduciary may bring a civil action: "to obtain . . . equitable relief . . . to enforce . . . the terms of the plan." 29 U.S.C. § 1132(a)(3). In Sereboff v. Mid Atlantic Medical Services, Inc., 547 U.S. 356, 363 (2006), the Supreme Court held that an ERISA fiduciary may sue a beneficiary for reimbursement of medical expenses, pursuant to the terms of the ERISA plan, where the fiduciary seeks recovery "through a constructive trust or equitable lien on a specifically identified fund," not from the beneficiary's general assets. In Sereboff, an ERISA plan paid medical expenses to two beneficiaries following an automobile accident, and then sought reimbursement from the beneficiaries after they received a tort settlement related to the accident. Id. at 360. The ERISA plan language provided that when a beneficiary was "sick or injured as a result of the act or omission of another person or party" and received

benefits from the plan, the beneficiary was required to reimburse the plan for those benefits from "[a]ll recoveries from a third party (whether by lawsuit, settlement, or otherwise)." Id. at 359 (internal quotation marks omitted). While the beneficiaries in Sereboff argued that the plan's claim was not equitable and thus not cognizable under ERISA, the Court held that the language of the plan gave rise to an "equitable lien by agreement" permitting the plan to obtain reimbursement from the beneficiaries' tort settlement. Id. at 364-65.

In US Airways, Inc. v. McCutchen, 133 S.Ct. 1537, 1546 (2013), the Court made clear that an "equitable lien by agreement . . . both arises from and serves to carry out a contract's provisions." In McCutchen, as in Sereboff, an ERISA plan beneficiary received a tort settlement related to an injury, and, pursuant to the terms of the plan[2], the ERISA plan sought reimbursement for medical expenses it had paid in connection with that injury. Id. at 1543. The beneficiary argued that "in equity," the ERISA plan "could recoup no more than an insured's 'double recovery' – the amount the insured has received from a third party to compensate for the same loss the insurance covered." Id. at 1545 (emphasis added). The beneficiary argued that, pursuant to this "double

[2] The plan at issue in McCutchen provided that when a beneficiary's claim arose as the result of the "negligence, willful misconduct, or other actions of a third party," the beneficiary was required to reimburse the employer for amounts paid for claims "out of any monies recovered from [the] third party . . . ." Id. at 1543.

recovery" rule, a principle of unjust enrichment, the ERISA plan's reimbursement would be limited "to the share of [the beneficiary's] settlements paying for medical expenses; [the beneficiary] would keep the rest (*e.g.*, damages for loss of future earnings or pain and suffering), even though the plan gives [the employer] first claim on the whole third-party recovery." Id. In other words, the beneficiary in McCutchen argued that, at equity, because the ERISA plan only paid for medical expenses, it could only seek reimbursement from him to the extent his settlement compensated him for medical expenses.[3] The Supreme Court rejected the beneficiary's argument, holding that the language of the ERISA plan governed, giving the plan first claim to his entire recovery. Id. at 1546-48. The Court confirmed that where an equitable lien by agreement exists, "[t]he agreement itself becomes the measure of the parties' equities," and held that "enforcing the lien means holding the parties to their mutual promises," which includes "declining to apply rules . . . at odds with the parties' expressed commitments." Id. at 1546, 1548.

In this case, just as in McCutchen, the language of the Plan plainly does not limit the Plan's ability to recover its expenditures for medical expenses to an award for medical expenses only, instead granting the Plan a right to reimbursement "regardless of how the proceeds are characterized." (See App. at 21.) While McLaughlin argues that such a result is inconsistent with the concept of equitable restitution, at issue here is an equitable lien by agreement, not equitable

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[3] In McCutchen, it appears that the tort recovery included compensation for medical expenses as well as other damages.

restitution. The Supreme Court's decision in McCutchen could not be clearer in holding that, under such circumstances, the language of the ERISA plan governs what the plan can recover.

McLaughlin argues that he was prohibited from claiming medical expenses in his tort action due to the NJCSS, which provides that in a civil action brought for personal injury, where the "plaintiff receives or is entitled to receive benefits for the injuries allegedly incurred from any other source other than a joint tortfeasor," this must be "disclosed to the court and the amount thereof which duplicates any benefit contained in the award shall be deducted from any award recovered . . . ." N.J. Stat. Ann. § 2A:15-97. We, however, are in agreement with the District Court that, regardless of the operation of the NJCSS, the Plan's language requiring McLaughlin to reimburse the Plan from the proceeds of his tort settlement is clear and controlling.

While McLaughlin appears to have assumed that the NJCSS would preclude recovery of medical expenses, given the Plan's right to reimbursement from his recovery, it is far from clear that the Plan's payments on his behalf would have constituted a "collateral source" of benefits under the NJCSS, had the issue actually been presented to a court. In Taransky v. Sec'y of U.S. Dept. of Health & Human Servs., --- F.3d --- , 2014 WL 3719158, at *8 (3d Cir. July 29, 2014), for example, we held that a tort plaintiff was responsible for reimbursing Medicare from the proceeds of her tort settlement, despite her argument that the NJCSS precluded her from recovering medical

expenses (and despite the fact that she had obtained an allocation order indicating that no portion of her settlement was attributable to medical expenses). We held that the NJCSS did not prevent Medicare from seeking reimbursement, as the Medicare payments, "because of their conditional nature, [did] not constitute a collateral source of benefits under the NJCSS." Id. Here, the Plan's payments on McLaughlin's behalf were similarly conditional, given the plain language of the Plan which contractually obligated McLaughlin to reimburse the Plan following a personal injury settlement. Just as we held in Taransky that the tort plaintiff "may not rely on the NJCSS to avoid reimbursing the Government for Medicare payments it has made on her behalf," id., so too here, McLaughlin cannot rely on the NJCSS to avoid reimbursing the Plan, as he was contractually obligated to do so.[4]

We have carefully considered McLaughlin's other arguments and find them to be without merit. While McLaughlin argues that he and his attorneys were under no duty to protect the Plan's interests, it is clear that the plain language of the Plan contractually obligated McLaughlin to reimburse the Plan. (See App. at 21 ("[a]cceptance of benefits . . . constitutes an agreement that any amounts recovered from another

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[4] Given our conclusion that the Plan's language created an enforceable equitable lien by agreement regardless of the operation of the NJCSS, we need not address the issue of ERISA pre-emption, although we note that we have elsewhere held that ERISA does pre-empt the NJCSS. See Levine v. United Healthcare Corp., 402 F.3d 156, 166 (3d Cir. 2005).

party . . . will promptly be applied first to reimburse the Plan . . . .") In addition, for the same reasons stated by the District Court, we reject McLaughlin's affirmative defense of laches.

IV.

For the foregoing reasons, we will affirm the District Court's order granting summary judgment in favor of the Board.

APPENDIX J

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civ. No. 12-4322

[Filed January 24, 2014]

Board of Trustees of the National Elevator Industry Health Benefit Plan,	)
Plaintiff,	)
v.	)
Bernard McLaughlin,	)
Defendant.	)

OPINION

THOMPSON, U.S.D.J.

This matter comes before the Court on Plaintiff Board of Trustees of the National Elevator Industry Health Benefit Plan's motion for summary judgment, (Doc. No. 20), and Defendant Bernard McLaughlin's counterclaim and motion for summary judgment, (Doc. No. 22). The Court has issued the Opinion below based

upon the written submissions of the parties and without oral argument pursuant to Federal Rule of Civil Procedure 78(b). For the reasons stated herein, the Court grants Plaintiff's motion for summary judgment and denies Defendant's motion.

DISCUSSION

Defendant's ERISA Plan seeks reimbursement for money paid toward Defendant's medical expenses. (Doc. No. 1, 1). Plaintiff is the named fiduciary and administrator of the National Elevator Industry Health Benefit Plan (the "Plan"), as defined in sections 402(a) and 3(16)(A) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1102(a) and § 1002(16)(A). Defendant was a participant in the Plan. (Doc. No. 1, 2).

On January 10, 2009, Defendant was injured in a motor vehicle accident. (Doc. No. 1, 1). Defendant asserted a liability claim against a third party for his injuries. (Doc. No. 1, 2). The third party settled with Defendant. (Doc. No. 1, 2).

A portion of Defendant's medical bills were paid by the Plan. (Doc. No. 1, 2). The Plan required Defendant to reimburse the Plan if Defendant received money from any proceeding related to the injury, "regardless of how the proceeds are characterized." (Doc. No. 1). The Plan states:

> [a]cceptance of benefits from the Plan for an injury or illness by a covered person [. . .] constitutes an agreement that any amounts recovered from another party by award, judgment, settlement or

> otherwise, and regardless of how the proceeds are characterized, will promptly be applied first to reimburse the Plan in full for benefits advanced by the Plan due to the injury or illness and without reduction for attorney's fees, costs, expenses or damages claimed by the covered person, and regardless of whether the covered person is made whole or recovers only parts of his/her damages.

(Doc. No. 1). Based on this language, Plaintiff contends that Defendant must reimburse Plaintiff for the money advanced for medical bills from the settlement proceeds. (Doc. No. 1). However, Defendant claims that he did not ask for or receive money for medical bills in the settlement and, therefore, is under no obligation to reimburse Plaintiff. (Doc. No. 22, 8).

Defendant has also counterclaimed pursuant to 29 U.S.C. § 1132 ((a)(1)(B)) for a declaration that his right to benefits is unaffected by this failure to reimburse the Plan and has moved for summary judgment on that count. (Doc. No. 22).

1. Legal Standard

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c)(2). The Court must construe all facts and inferences in the light most favorable to the nonmoving party. *Boyle v. City of Allegheny Pennsylvania*, 139 F.3d 386, 393 (3d Cir. 1998). The nonmoving party must come forward

with specific facts showing a genuine issue for trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (citations omitted). "A factual dispute is 'genuine' and . . . warrants trial 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Brightwell v. Lehman*, 637 F.3d 187, 194 (3d Cir. 2011) (citations omitted).

"Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Anderson v. Liberty Lobby*, 477 U.S. 242, 255 (1986). If a civil defendant moves for summary judgment on the basis that plaintiff has failed to establish a material fact, the judge must inquire not as to "whether [s]he thinks the evidence unmistakably favors one side or the other but[,] whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented." *Id.* at 252. A mere "scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Id.*

2. Analysis

The Court must determine three main issues: 1) whether Plaintiff may bring the present action; 2) whether the Court should enforce the terms of the Other Party Liability Claims provision of the Plan; and 3) whether Defendant may assert the affirmative defense of laches.

a. Can Plaintiff Bring the Present Action?

The threshold question in this case is whether Plaintiff can bring the present action. A fiduciary may bring a civil action under § 502(a)(3) of ERISA in the following circumstances:

> (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan; or
>
> (B) to obtain other appropriate equitable relief;
>
> (i) to redress such violations; or
>
> (ii) to enforce any provisions of this subchapter or the terms of the plan.

29 U.S.C. § 1132(a)(3). When a fiduciary seeks to obtain equitable relief to enforce the terms of the plan, suit is only authorized under "those categories of relief that were *typically* available in equity." *Mertens v. Hewitt Associates,* 508 U.S. 248, 256 (1993). Plaintiff is a fiduciary under ERISA and Plaintiff's suit is to enforce the terms of the "Other Party Liability Claims" provision in the Plan. Thus, the only question remaining is whether the relief requested is "equitable" under § 502(a)(3)(B). *See Sereboff v. Mid Atl. Med. Servs., Inc.*, 547 U.S. 356, 361 (2006).

An equitable lien by agreement constitutes equitable relief authorized by § 502(a)(3) of ERISA. *Sereboff*, 547 U.S. at 368-69. To qualify as an equitable lien by agreement, the contract must: 1) identify a particular fund distinct from the defendant's general assets; and 2) identify a particular share of the fund to

which it is entitled. *Id.*; *see also U.S. Airways, Inc. v. McCutchen*, 133 S.Ct. 1537, 1544 (2013) ("a contract to convey a specific object not yet acquired creates a lien on that object as soon as the contractor gets a title to the thing") (internal citations omitted).

Here, Defendant claims that the settlement lacks a sufficient nexus to the medical bills to satisfy this test.[1] However, this case is analogous to *Sereboff*, in which the Court found that a plan seeking reimbursement for medical expenses under a similar agreement "properly sought 'equitable relief' under §502(a)(3)." *Sereboff*, 547 U.S. at 369. Even though the settlement in that case did not specifically identify money for medical bills, the plaintiff's action was an action for equitable relief because the claim specifically identified the portion of the settlement to which the plan was entitled. *Id.* Similarly, the Plan in this case identifies "any amounts recovered from a third party by award, settlement, judgment or otherwise" as a particular fund distinct from Defendant's general assets. The Plan also specifically calls for the amount necessary to "reimburse the Plan in full for benefits advanced," a particular share of the fund to which the Plan is

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[1] While Defendant cites the Supreme Court's decision in *Knudson*, in which the Court found that a plan was not entitled to bring its claim for reimbursement, this case is much different. *See Great-West Life & Annuity Insurance Co, et al. v. Knudson*, 534 U.S. 204 (2002). In *Knudson*, the Court examined an equitable lien imposed by restitution, whereas the present case deals with an equitable lien by agreement. *Id.* at 211. The Supreme Court has noted that "an equitable lien sought as a matter of restitution and an equitable lien 'by agreement' . . . [are] different species of relief." *Sereboff*, 547 U.S. at 364.

entitled.[2] Accordingly, the Court finds that Plaintiff can bring the present action under § 502(a)(3) of ERISA.

b. Enforceability of Other Party Liability Claims Provision

After finding that Plaintiff can bring the present action, the Court now turns to the enforcement of the Other Party Liability Claims provision.

Defendant argues that the New Jersey Collateral Source Statute, N.J.S.A. 2A: 15-97, prohibited him from claiming medical expenses in his state court action. Since Defendant did not claim medical expenses and believed that New Jersey law prevented Defendant from recovering medical expenses in the suit, Defendant argues that he should not be required to reimburse Plaintiff.[3] The Court disagrees and finds that the "Other Party Liability Claims" provision should be enforced for two reasons: 1) ERISA preempted the Collateral Source Statute in this circumstance; and 2) the "Other Party Liability Claims" provision constituted an equitable lien by agreement

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[2] Defendant also claims that, since he has already spent the settlement proceeds, the lien is no longer enforceable. However, in *Funk v. CIGNA Group Ins.*, 648 F.3d 182, 194 FN 14 (3d. Cir. 2011), the Third Circuit rejected such an argument and held that "contrary to the Court's discussion in *Knudson*, the defendant need not possess the property at the time relief is sought for the relief to be equitable – any post agreement possession will suffice."

[3] Defendant also argues that Defendant's attorney had no duty to the Plan and had no duty to request reimbursement for medical expenses. The Court finds this argument unpersuasive.

and is enforceable regardless of the operation of the Collateral Source Statute in the state court proceeding.

i. Preemption of the Collateral Source Statute

"Generally, a state law that 'relates to' an ERISA-governed plan is preempted by ERISA." *Levine v. United Healthcare Corp.*, 402 F.3d 156, 164 (3d Cir. 2005); *see also* 29 U.S.C. § 1144(a) (ERISA's regulatory structure "shall supersede any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan [subject to ERISA].") (emphasis added). Whether an issue is preempted by ERISA hinges on whether it "relates to" an employee benefit plan. *See Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 62-63 (1987). A claim "relates to" an employee benefit plan "if it has a connection with or reference to such a plan." *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 98 (1983). "Congress used th[e] words [relate to] in their broad sense, rejecting more limited pre-emption language that would have made the clause applicable only to state laws relating to specific subjects covered by ERISA." *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 138 (1990) (citations omitted).

Here, the Collateral Source Statute is a law of general application that requires "a plaintiff who receives benefits from any source other than a joint tortfeasor to deduct that amount from his or her recovery in any civil action." *Levine v. United Healthcare Corp.*, 402 F.3d 156, 164 (3d Cir. 2005). On the other hand, the Plan requires Defendant to reimburse Plaintiff for medical expenses from the settlement proceeds, regardless of how the proceeds are characterized. Since the Collateral Source Statute is

preempted to the extent it relates to the Plan and the Plan specifically requires reimbursement for medical expenses from the proceeds of any suit related to the injury, the Plan's terms govern.

ii. Enforceability of the Terms of the "Other Party Liability Claims" Provision

The Collateral Source Statute is not only preempted by ERISA, but Plaintiff is also seeking to enforce the modern day equivalent of an "equitable lien by agreement." *See U.S. Airways, Inc. v. McCutchen*, 133 S. Ct. 1537, 1544-45 (2013). An equitable lien by agreement "both arises from and serves to carry out a contract's provisions." *Sereboff*, 547 U.S. at 363-64. "[E]nforcing the lien means holding the parties to their mutual promises." *McCutchen*, 133 S. Ct. at 1546. "Even in equity, when a party sought to enforce an equitable lien by agreement, all provisions of that agreement controlled." *Id.* at 1549. Therefore, principles, such as unjust enrichment or collateral source, are "beside the point" when parties demand what they bargained for in a valid agreement. *Id.* at 1546. This holding is consistent with "ERISA's focus on what a plan provides." *Id.* at 1548. Courts construe ERISA plans, as they do other contracts, by "'looking to the terms of the plan' as well as to 'other manifestations of the parties' intent." *Id.* at 1549; *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 113 (1989).

Here, the Parties agreed that if Defendant accepted benefits from the Plan he would reimburse the Plan with the proceeds of settlements related to the injury. The contractual language specifically states that money

for medical expenses must be reimbursed "regardless of how the proceeds are characterized." Therefore, the parties agreed that Defendant would reimburse Plaintiff even if the settlement did not include money for medical bills. Since the Plan's language is clear and the agreement controls, Defendant must reimburse Plaintiff from the settlement.

c. Laches Defense

Before finding that Plaintiff prevails, the Court turns to Defendant's affirmative defenses. Defendant asserts an affirmative defense of laches to bar the enforcement of the equitable lien by agreement. To assert a laches claim, a defendant must show: (1) inexcusable delay by the plaintiff in pursuing the claim; and (2) prejudice to the defendant as a result of delay. *Tracinda Corp. v. Daimler-Chrysler AG*, 502 F.3d 212, 226 (3d Cir. 2007).

Here, Defendant argues that Plaintiff waited until after Defendant settled his liability claim to seek enforcement of its equitable lien by agreement. However, the Court in *Sereboff* noted that an equitable lien by agreement allows health plans to "follow a portion of the recovery into the [defendant's] hands as soon as the [settlement fund] was identified." *Sereboff*, 547 U.S. at 364. The fund was not identified until after the settlement. Additionally, Defendant was not prejudiced due to the fact that the lawsuit was filed after the settlement; the Plan itself provided Defendant notice of Plaintiff's potential claim to settlement funds. Thus, the affirmative defense of laches fails.

d. Counterclaim

Finally, Defendant has counterclaimed pursuant to 29 U.S.C. §1132 (a)(1)(B) for a declaration that his benefits are unaffected by this failure to reimburse on the grounds that he does not owe the Plan any money. Defendant has moved for summary judgment on that count. (Doc. No. 22). For the reasons discussed above, Defendant does owe the Plan and, therefore, cannot prevail on this claim.

CONCLUSION

For the foregoing reasons, Plaintiff's motion for summary judgment is granted and judgment is entered in favor of Plaintiff.

Anne E. Thompson

ANNE E. THOMPSON, U.S.D.J.

Date: 1/21/14

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civ. No. 12-4322

[Filed January 24, 2014]

Board of Trustees of the National Elevator Industry Health Benefit Plan,	)
Plaintiff,	)
v.	)
Bernard McLaughlin,	)
Defendant.	)

ORDER and JUDGMENT

THOMPSON, U.S.D.J.

For the reasons included in the Opinion issued herewith,

IT IS, on this 21st day of January, 2014,

ORDERED that the motion of Plaintiff Board of Trustees of the National Elevator Industry Health Benefit Plan for summary judgment, (Doc. No. 20), is GRANTED; and it is

ORDERED that the motion of Defendant Bernard McLaughlin for summary judgment, (Doc. No. 22), is DENIED; and it is

ORDERED that JUDGMENT be entered in favor of Plaintiff Board of Trustees of the National Elevator Industry Health Benefit Plan.

Anne E. Thompson
ANNE E. THOMPSON, U.S.D.J.