

Amend ERISA § 502(a)(3) [codified at U.S.C. § 1132(a)(3)(B)] to add the following underlined language so that it reads:

§ 1132 Civil Enforcement

(a) Persons empowered to bring a civil action action

A civil action may be brought—

* * *

(3) by a participant, beneficiary, or fiduciary--

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

(a) With respect to any plan provision requiring a participant or beneficiary to reimburse the plan or plan fiduciary for any amount recovered from any source relating to a personal injury or similar type of claim, reimbursement shall be available only if the participant or beneficiary has been fully compensated for all damages arising out of such claim.

(b) The amount recoverable by the plan or plan fiduciary for reimbursement or subrogation shall be reduced by its proportional share of the attorney's fees and expenses incurred by or on behalf of the participant or beneficiary in making the recovery. Any disputes between the plan, plan fiduciaries and plan participants or beneficiaries regarding the plan's or plan fiduciary's recovery for reimbursement or subrogation shall be resolved in the jurisdiction of the underlying civil claim.

(c) No plan or plan fiduciary shall be entitled to withhold or reduce benefits as a means of enforcing a claim for reimbursement or subrogation;

(d) No plan or plan fiduciary shall disallow any plan benefits otherwise available because of the existence or resolution of a potential injury claim belonging to a plan participant or beneficiary nor deny to the plan participant or beneficiary the coordination of benefits between benefit plans and/or insurance policies.