

## THE 2017 CLAY AWARDS

The 21st Annual California Lawyer Attorneys of the Year

### ERISA

## Reexamining the federal employee retirement law

*Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan*

When Peter K. Stris, the founding and managing partner of Stris & Maher LLP, learns the U.S. Supreme Court has granted a cert petition in a case he'll be arguing, he makes a quick call to Georgetown University Law Center. Like most Supreme Court advocates, he asks for a moot court practice session at the school's prestigious Supreme Court Institute, but there's a catch. Because of confidentiality concerns, the institute reserves its replica courtroom and panel of stand-in "justices" for one side of each case only. Reservations are honored on a first-come basis for the first counsel for a party to contact the institute after the court grants review. When both sides get in touch within the first 24 hours, as usually happens, administrators flip a coin. Petitioner is heads, respondent is tails. In last year's *Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan*, No. 14-723, Stris lost the flip but went on to win the case.

In the 2015 term, his firm represented clients in three of the Supreme Court's most significant business cases. Stris argued and won two of them, including *Montanile*.

The case involved Robert Montanile's \$121,000 in medical expenses following a car accident. His employer's Employee Retirement Income Security Act health plan — the National Elevator Industry Health Benefit Plan — paid the expenses. The trustees of the plan then sought reimbursement from a \$500,000 settlement Montanile's attorneys had obtained for him. Montanile argued that because he had already spent the \$240,000 that remained after the lawyers took their cut, the trustees were out of luck when they sued to enforce a lien against him. Lower courts sided with the trustees in Montanile's case, though federal appellate circuits have split on the question. Stris and counsel of record Radha Pathak, an associate dean at Whittier Law School and of counsel to Stris & Maher, argued that a plan can recover settle-



PETER STRIS and RADHA PATHAK of Stris & Maher LLP

ment funds only if they are in the beneficiary's possession.

The high court agreed, 8-1, holding that the law did not permit a judgment against Montanile's general assets, but only against funds related to the settlement.

"The decision in *Montanile* was an important victory for individuals who have obtained tort settlements and used those much-needed funds to pay for basic living expenses like food, rent and child care," Pathak said. "Before, insurance companies were obtaining judgments against those individuals, many of whom were like our client — of modest means to begin with and then the victim of a serious accident."

She said the outcome was significant for the public, especially seniors. "It reaches beyond its particular factual context: The Supreme Court's decision will also protect at least some retirees from having to use their fixed income

to correct payment mistakes made through no fault of their own."

Stris, who has his seventh high court argument coming up March 21 on behalf of a potential class of consumers suing Microsoft Corp. for alleged defects in its Xbox 360 game console, said he no longer gets as nervous as he did a decade or so ago when he first appeared before the justices. Earlier this year, he sat as second chair when law partner Daniel L. Geyser argued for the respondent in *Midland Funding LLC v. Johnson*, No. 16-348, a Fair Debt Collection Practices Act case.

"The whole experience is extremely rewarding," Stris said. "It is advocacy at the highest level. The justices know these cases really well and are fully engaged. Of course, it is much more rewarding to win."

— John Roemer