

Supreme Court Finds Equitable Defenses Do Not Override ERISA Plan Terms

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April 18, 2013 -- On April 16, 2013, the United States Supreme Court decided *US Airways, Inc. v. McCutchen, et al*, finding that equitable defenses are not available if they contradict the terms of an ERISA plan. However, the Court found that certain equitable doctrines should be looked at for determining the parties' intent where the terms of the plan at issue did not address an issue. James McCutchen, a participant in US Airways' health benefits plan, was injured in an auto accident when another driver lost control of her vehicle. The plan paid for \$66,866 in medical expenses on McCutchen's behalf. McCutchen subsequently retained counsel and sued the other driver. He recovered \$10,000, as well as a \$100,000 payment from his own auto insurer. His attorneys took a 40% contingency fee from the total \$110,000 recovery, leaving McCutchen with \$66,000. US Airways demanded that McCutchen return the entire \$66,866 payment, citing language in its summary plan description requiring repayment of amounts recover from third parties for claims paid by the plan. McCutchen refused to make the payment and US Airways sued under ERISA section 502(a)(3) seeking "appropriate equitable relief" to enforce the plan's reimbursement provision. McCutchen argued that there was no repayment obligation absent an over-recovery on his part. He argued that he was paid only a small portion of his damages, which included pain and suffering, not just medical expenses. McCutchen also argued that US Airways had to contribute its fair share to the costs he incurred to obtain his recovery (i.e., the attorney's fees). This second argument derives from the equitable "common fund" doctrine, under which a litigant or lawyer who receives a common fund for the benefit of others is entitled to a reasonable attorney's fee from the fund as a whole. The district court granted summary judgment to US Airways, finding that the plan unambiguously provided for full reimbursement of medical expenses paid. McCutcheon appealed to the Third Circuit, which reversed, finding that traditional equitable doctrines and defenses apply to Section 502(a)(3) actions. The Third Circuit held that the doctrine of unjust enrichment should reduce the plan's recovery because McCutchen was left with less than a full recovery and US Airways received a windfall. It instructed the district court to determine what amount less than \$66,866 would qualify as "appropriate equitable relief." The Supreme Court granted certiorari to resolve a circuit split on

whether equitable defenses can override an ERISA plan's reimbursement provision. Relying on its opinion in *Sereboff v. Mid Atlantic Medical Services* (2006), the Court found that equitable defenses cannot override the plain terms of an ERISA plan. However, the Court found that this particular plan was silent on the allocation of attorney's fees for a third-party recovery. It therefore looked to "background legal rules" to ascertain the parties' intent on that issue. It found that the common fund rule should be looked to provide the default, stating "A party would not typically expect or intend a plan saying nothing about attorney's fees to abrogate such a strong and uniform background rule." The case was remanded for further proceedings to determine the application of the common fund doctrine. Justice Scalia, in a dissent joined by Chief Justice Roberts and Justices Alito and Thomas, agreed that equitable defenses cannot override plan terms, but argued that the question presented on certiorari was only that, and the majority went too far in finding the plan's terms not plain and applying the common fund doctrine. Given this ruling, ERISA plans should be specific regarding allocation of attorney's fees for third party recoveries, or the common fund doctrine will govern.

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