



## ERISA AND BENEFITS LITIGATION CLIENT ALERT

April 22, 2013

### ***U.S. Airways, Inc. v. McCutchen:* Important Supreme Court Case Holds the Clear Terms of an ERISA Plan Govern Reimbursement Following a Plan Participant's Third-Party Recovery**

In a 5-4 split decision, the Supreme Court held in *U.S. Airways, Inc. v. McCutchen*, No. 11-1285 (April 16, 2013), that equitable principles may not be used to override the explicit terms of an ERISA<sup>1</sup> plan relating to reimbursement or payment of attorneys' fees in a participant's third-party action against a negligent party, but may be used to interpret the plan where it is silent.

In 2007, James McCutchen suffered injuries as the result of an automobile accident caused by a third party. At the time, McCutchen was employed by U.S. Airways and participated in its health benefit plan, which was governed by ERISA. The plan paid \$66,866 in medical expenses arising from the accident.

McCutchen retained an attorney and sued the third party responsible for the automobile accident, ultimately settling for \$10,000 from the driver. McCutchen also recovered \$100,000 from his own automobile insurer, for a total recovery of \$110,000. After McCutchen's attorney deducted his 40% contingency fee, McCutchen was left with \$66,000.

U.S. Airways filed an action against McCutchen for reimbursement of the \$66,866 that the plan had paid for his medical expenses. U.S. Airways sought to enforce the plan's subrogation clause, which stated participants were required to "reimburse [U.S. Airways] for amounts paid for claims out of any monies recovered from the third party." U.S. Airways based its suit on Section 502(a)(3) of ERISA, which allows a plan to seek "appropriate equitable relief" to enforce its provisions.

McCutchen denied U.S. Airways was entitled to reimbursement on the basis that strict enforcement of the plan would unjustly enrich U.S. Airways, because it had not paid for or participated in his suit against the third party. McCutchen further argued other equitable

---

<sup>1</sup> The Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1461.

principles, including the common fund doctrine and the prohibition against double recovery, should apply to reduce any award to U.S. Airways.

The district court rejected McCutchen's arguments, holding the plan "clear[ly] and unambiguous[ly]" provided for full reimbursement of the medical expenses paid. The U.S. Court of Appeals for the Third Circuit reversed, concluding that in a suit for "appropriate equitable relief" under Section 502(a)(3) of ERISA, a court must apply any "equitable doctrines and defenses" that traditionally limited the relief requested.

The Supreme Court granted certiorari to resolve a circuit split on whether equitable doctrines may trump an ERISA plan's terms. The Supreme Court held equitable principles of unjust enrichment, such as the double recovery rule and the common fund doctrine, may not override the clear terms of a contract. Where a plan is silent on an issue, however, courts may apply long-established legal rules (including equitable doctrines) to construe the parties' intentions.

In this case, although the double recovery rule conflicted with the plan's reimbursement provision, the plan was silent as to allocation of the costs of recovering against a third party. The plan did not specify whether U.S. Airways had first claim to every cent the third party paid or, instead, to the amount McCutchen actually received after attorneys' fees were paid.

Given this "contractual gap," the majority opinion, written by Justice Kagan and joined by Justices Kennedy, Ginsburg, Breyer and Sotomayor, ordered application of the common-fund doctrine, resulting in a reduction of U.S. Airways' reimbursement to account for its share of McCutchen's attorneys' fees. The dissenting opinion, written by Justice Scalia and joined by Chief Justice Roberts and Justices Thomas and Alito, explained that "full reimbursement" should be understood as the amount of funds actually received by McCutchen, and because the plan stated its reimbursement could not be reduced by any amount, no reduction should have been allowed for attorneys' fees.

This important decision provides further guidance in the interpretation of ERISA plans by holding that if a plan is clearly drafted, it will be enforced as written. In light of this decision, employers should review the subrogation and reimbursement provisions in their benefit plans. These provisions should expressly and unambiguously explain the amounts to which the plan is entitled to recover in the event of recovery from a third party, and whether and how the plan will pay any portion of the attorneys' fees and costs incurred by the participant in obtaining such recovery.

### **Additional Information**

For more information on this and other ERISA and Benefits Litigation-related questions, please contact your Kutak Rock attorney or one of Kutak Rock's ERISA and Benefits Litigation group members.

This Client Alert is a publication of Kutak Rock LLP. This publication is intended to notify our clients and friends of current events and provide general information about employment law issues. This Client Alert is not intended, nor should it be used, as legal advice, and it does not create an attorney-client relationship.

To ensure compliance with requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication should not be used or referred to in the promoting, marketing or recommending of any entity, investment plan or arrangement, and such advice is not intended or written to be used, and cannot be used, by a taxpayer for the purpose of avoiding penalties under the Internal Revenue Code.

© Kutak Rock LLP 2013  
All Rights Reserved

This communication may be considered advertising in some jurisdictions.