



## Supreme Court Holds That Clear Plan Terms Control Equitable Remedies: *U.S. Airways, Inc. v. McCutchen*

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BY: MARK S. THOMAS

In *U.S. Airways, Inc. v. McCutchen*, No. 11-1285 (Apr. 16, 2013), the U.S. Supreme Court underscored the importance of clearly stated benefit plan terms while also clarifying how equitable doctrines can be used where plans are silent on an issue. The outcome of *McCutchen* reminds plan sponsors of the crucial need to draft plans clearly and comprehensively.

James McCutchen was an employee-participant in the US Airways self-funded health plan ("Plan"), and suffered serious injuries in an automobile accident caused by a third party. The Plan paid \$66,866 in benefits to cover McCutchen's medical expenses arising from the accident. McCutchen sued the third party who caused the accident and ultimately recovered a total of \$110,000: only \$10,000 in a settlement from the uninsured third party, and \$100,000 from McCutchen's own automobile insurer. Under his agreement with his own attorneys, these recoveries were subject to a 40% contingency fee agreement. As a result, McCutchen stood to receive a net recovery of only \$66,000 – less than the benefits paid by the Plan.

US Airways sought reimbursement for the Plan of the medical benefits paid. The plan document itself was silent on a right of reimbursement, but the Plan relied on the following statement in the summary plan description:

If [US Airways] pays benefits for any claim you incur as the result of negligence, willful misconduct, or other actions of a third party, . . . [y]ou will be required to reimburse [US Airways] for amounts paid for claims out of any monies recovered from [the] third party, including, but not limited to, your own insurance company as the result of judgment, settlement, or otherwise.

(In this case, because the parties treated this language as governing, the courts did so as well.)

When McCutchen refused to pay the demanded reimbursement, US Airways filed an action based on ERISA § 502(a)(3), to obtain "appropriate equitable relief" to enforce the terms of the Plan. Opposing

the US Airways claim, *McCutchen* asserted the equitable defense that the Plan would be unjustly enriched if it did not share in the cost of the attorney's fees incurred in recovering the \$110,000. The federal district court ruled for the Plan. Its decision was overturned by the Third Circuit, and US Airways then petitioned the U. S. Supreme Court for review.

The Supreme Court held that the equitable defenses raised by *McCutchen* could not be asserted to override the terms of the Plan. In this instance, the Plan was found to have a clear reimbursement provision, which the Court interpreted to create an "equitable lien by agreement" between the Plan and participants: when the Plan paid benefits for expenses caused by the negligence of a third party, the participant was deemed to agree that the Plan could recover the benefits paid out of the amounts recovered from the third party. *McCutchen's* equitable defenses would not be allowed to trump the plan terms.

However, the Court also held that these equitable doctrines could inform the interpretation of the reimbursement provision where that plan term "was silent on the allocation of attorney's fees, and in those circumstances, the common-fund doctrine provides the appropriate default." As the Court explained, the common fund doctrine is based on the equitable rule that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." The Court therefore vacated the lower court's decision and remanded the case with instructions to allocate a share of the costs of recovery to US Airways in awarding reimbursement; in other words, the Plan's allocated share of the attorney's fees would be subtracted from its reimbursement amount.

*McCutchen* thus reinforces the importance of plan terms and ensuring that plans properly foresee and adequately provide terms to deal with issues such as reimbursement for benefits and the allocation of the costs of recovery in a reimbursement claim. At the same time, where such specific guidance in a plan is lacking, *McCutchen* will lend support to a party invoking equitable doctrines to fill gaps in the plan.

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