Supreme Court Holds that a Plan?Ã‡Ã–s Clear Terms Prevail in Reimbursement Action

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On April 16, 2013, the U.S. Supreme Court issued its decision in *US Airways, Inc.?Ã¡v. McCutchen*. In its opinion, the Court addressed whether equitable doctrines derived from the principle of unjust enrichment can override the clear terms of an ERISA benefit plan regarding rights to reimbursement from a third-party recovery. Mr. McCutchen was a participant in the US Airways group health plan (the ?ÃÂ£Plan?ÃÂ¥), which was governed by ERISA. After incurring claims under the Plan based on injuries he sustained in an automobile accident, McCutchen hired an attorney on a contingency fee basis to sue the driver of the other vehicle. McCutchen sought damages for medical costs, lost earnings, and other injuries. The lawsuit resulted in a settlement recovery, and McCutchen also obtained a payment from his own automobile insurer. After offsetting his total recovery by his attorney?ÃÃs contingency fee, McCutchen was left with a recovery that was less than the amount paid by the Plan for his injury claims. The Plan contained provisions requiring participants to reimburse the Plan for amounts it paid for a participant?ÃÃs claims out of any monies the participant recovered from third parties, including the participant?ÃÃs own insurer. Accordingly, the Plan demanded reimbursement from McCutchen of the full amount of his claims it had paid. When McCutchen refused, the Plan filed an action for reimbursement under ERISA ?Âº 502(a)(3), which authorizes civil actions ?ÃÂ£to obtain?ÃÂªappropriate equitable relief?ÃÂªto enforce?ÃÂªthe terms of the plan.?ÃÂ¥ McCutchen raised two defenses based on equitable doctrines: the first asserting that reimbursement should be available to the Plan only to the extent of his ?ÃÂ£double recovery,?ÃÂ¥ and the second asserting that the Plan, as the party seeking reimbursement, must be required to pay a share of the attorney?ÃÃs fees incurred in securing the recovery (*i.e.*, the ?ÃÂ£common fund?ÃÂ¥ doctrine). The Court held that in an action brought under ERISA ?Âº 502(a)(3), neither general principles of unjust enrichment nor specific doctrines reflecting those principles, such as the two asserted by McCutchen, could override the clear terms of the ERISA plan. The Court found that the Plan contained the clear terms necessary to prevent the application of the ?ÃÂ£double recovery?ÃÂ¥ doctrine; therefore, the Plan could obtain reimbursement from McCutchen even though he had not recovered his full damages. However, the Court determined that the Plan did not contain any provisions addressing the allocation of attorney?ÃÃs fees; thus, the common fund doctrine was the appropriate default. Consequently, the Plan?ÃÃs reimbursement was offset by a proportional allocation of McCutchen?ÃÃs attorney?ÃÃs fees. This case is noteworthy because it resolves a split among the federal circuit courts regarding whether equitable defenses can override an ERISA plan?ÃÃs reimbursement provisions. Moreover, it highlights the importance of ensuring that an ERISA plan contains clear and complete language regarding the plan?ÃÃs rights to both subrogation and reimbursement from third party recoveries, including the allocation of attorney fees. For example, an ERISA plan could be drafted to expressly provide that the plan?ÃÃs recovery is not offset by any portion of the plaintiff?ÃÃs attorney?ÃÃs fees. A copy of the *McCutchen* opinion is available **here**.

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