

U.S. AIRWAYS V. MCCUTCHEN – TRADITIONAL EQUITABLE DOCTRINES DO NOT OVERRIDE THE EXPRESS TERMS OF AN ERISA PLAN*

***(but they can apply where the plan is silent on the issue)**

On April 16, 2013, the Supreme Court published its opinion in *U.S. Airways, Inc. v. McCutchen*, case No. 11-1285. The issue before the Court was the extent to which a benefit plan's express terms may be overridden, modified, or amended by equitable doctrines or defenses.

The case arises out of an auto accident in which James McCutchen, a U.S. Airways employee, was injured. U.S. Air provided a self-funded health plan to its employees, which paid medical costs in the event of an injury. The Plan terms required a participant who recovered money from a negligent third party from a "judgment, settlement, or otherwise" to reimburse the plan. The Plan paid \$66,866 in medical costs. McCutchen settled with the adverse driver for \$10,000, and recovered \$100,000 from his own insurer under his uninsured/underinsured motorist coverage. Of the \$110,000 total, McCutchen's attorney received 40% or \$44,000; McCutchen received the remaining \$66,000.

The Plan sued McCutchen in District Court under ERISA Section 502(a)(3), which authorizes appropriate equitable relief. The Plan alleged that that it was entitled to reimbursement of the total amount it paid in medical expenses, on the basis that the Plan's reimbursement provision created an equitable lien by agreement. McCutchen argued that the Plan was not entitled to any recovery unless and until McCutchen received compensation for all of the damages he suffered ("make whole" relief), and that he was not fully compensated by the \$66,000 he received. Alternatively, McCutchen argued that any reimbursement to the Plan should be reduced by the 40% attorney's contingent fee, on the basis that the Plan should contribute to the legal costs incurred in obtaining the recovery (the "common fund" doctrine). The District Court rejected both of McCutchen's arguments, granting summary judgment to the Plan on the grounds that the plan document "clearly and unambiguously" provided for full reimbursement of benefits paid. The Third Circuit held that, in order to determine what constitutes "appropriate equitable relief" under (a)(3), a court must apply traditional equitable doctrines and defenses, and remanded the matter to the District Court for a determination of what amount constituted "appropriate equitable relief."

The Supreme Court, by a 5-4 vote, vacated the Third Circuit's ruling. Justice Kagan, writing for the majority, stated that where the parties have entered into a valid ERISA contract, and it expressly provides for reimbursement, equity will not override, modify, or amend the terms of the Plan. As Justice Kagan put it, "[t]h plan, in short, is at

the center of ERISA. And precluding McCutchen's equitable defenses from overriding plain contract terms helps it to remain there." The Court accordingly rejected application of "make whole" relief to the Plan's claim for reimbursement.

The Court did, however, find in McCutchen's favor with respect to the "common fund" claim. Justice Kagan wrote that equitable principles will help to interpret plan terms where the plan document does not address an issue. The Court found that the plan document did not specifically address the common fund rule, and that this was significant: "if U.S. Airways wished to depart from the well-established common-fund rule, it had to draft its contract to say so – and here it did not." The Court cited a long line of cases holding that courts often look outside of the plan's written language to decide what the document means, and that equitable doctrines have traditionally been applied in the absence of express contract terms. Noting that the rule reflects "the traditional practice in courts of equity", the Court held that "[a] party would not typically expect or intend a plan saying nothing about attorney's fees to abrogate so strong and uniform a background rule."

Justices Kennedy, Ginsburg, Breyer, and Sotomayor joined in the majority opinion. Justice Scalia wrote a brief dissent, arguing that the Court granted cert on the question of whether the Plan was entitled to *full* reimbursement of the funds expended, and that McCutchen conceded that the Plan terms required a participant to reimburse the Plan for any amounts it paid without any contribution to attorney's fees and expenses. As such, the dissent stated that the "common fund" argument was not properly preserved for appeal, but did not otherwise take issue with the majority's legal interpretation.

This opinion reinforces the importance of plan drafting. The Court has soundly reaffirmed (and the dissent concurs) that the express language of an ERISA plan is controlling, and that claimants may not use the equitable relief afforded under (a)(3) to modify the terms of the plan. Claimants may, however, apply equitable doctrines in situations that the plan either does not expressly address, or which are arguably subject to equitable interpretation. With respect to health benefits plans in particular, courts will apply equitable doctrines unless the plan document expressly addresses the scope of the contractual lien. For example, many plan documents state "[plan] is entitled to collect on its lien even if the amount you recover is less than the actual loss you suffered" ("make whole" relief), but do not address whether the lien will be reduced by the amount of the attorney's fees expended in obtaining the recovery. This issue is sufficiently significant that its omission may act as tacit consent to its application.