

U.S. Supreme Court Decision

U.S. Airways, Inc. v. McCutchen

By Ann M. Caresani

The United States Supreme Court issued an opinion on April 16, 2013 in an ERISA case regarding the breadth of Section 502(a)(3) relief, and the common-fund doctrine. While the decision was unanimous on the primary issues, the Court surprised us with a 5-to-4 split on a secondary issue. Overall, the decision in *U.S. Airways, Inc. v. McCutchen* is favorable for employers sponsoring health care plans. The decision is also favorable for health care plan participants in the aggregate because it allows for control of plan costs, and premiums, at a critical time when plans are gearing up for 2014 health care reform cost increases.

We discussed the facts and prior decisions in this case in considerable detail in a prior blog. You might want to review that blog to put this decision in context. To summarize, a health care plan provided that it would cover expenses caused by a third-party, subject to the condition that the plan be reimbursed from any monies recovered from a third party. (This is a common provision in ERISA health care plans, intended to control costs for all participants and to avoid costly litigation over recovery.) Mr. McCutchen was in an auto accident with another vehicle, and the plan paid \$66,866 of health care plan expenses he incurred due to that accident. After Mr. McCutchen recovered funds from the other driver and his own insurer for underinsured

motorist coverage, the plan sought reimbursement of expenses it had paid, in accordance with plan terms. He refused to repay anything, and the case headed to court.

Eventually, the U.S. Supreme Court agreed to hear the case to resolve a circuit split on whether “equitable defenses” could override an ERISA plan’s reimbursement provision. Justice Kagan delivered the opinion, joined by four other justices. Applying prior case law (*Sereboff v. Mid Atlantic Medical Services, Inc.*), the Court first held that in a Section 502(a)(3) action based on equitable lien by agreement, the ERISA plan’s terms govern. Neither general unjust enrichment principles nor specific doctrines reflecting those principles can override the applicable contract. Accordingly, the plaintiff’s argument that double-recovery rules prevailed over plan terms was rejected. The participant was being held to the agreement to reimburse in the event of recovery.

The Court next rejected the Department of Labor’s argument that the common-fund rule has a special capacity to trump a conflicting contract. The common-fund rule provides that “a litigant or 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 found that this rule was treated the

same as any other rule: ERISA plan terms prevail.

Then, the Court took a somewhat surprising next step. It found a “contractual gap” in the plan document regarding the cost of recovery. The Court found that the common-fund doctrine provided the best indication of the parties’ intent, requiring the attorney’s fees to be paid before the plan was reimbursed. The Court’s majority thought it was unfair that plaintiff would have been “in the hole” for \$866 if the common-fund doctrine had not been applied.


The \$866 arose based on four agreements the plaintiff entered into: with the plan, attorney, and two other parties. Another view of the \$866, from the other plan participants’ perspectives, is that the \$866 was not a hole, but was plaintiff’s gamble that he could pay an attorney a 40% contingency fee on the entire recovery, and keep the approximately \$66,000 remaining, rather than repaying anything to the plan.

In a dissent, Justice Scalia (joined by three other justices, including Chief Justice Roberts) agreed with the majority on the primary issues, but disagreed regarding the “contractual gap.” In the dissent’s view, the parties had conceded that the plan provided for full reimbursement, without any contribution to attorney’s fees and expenses. Therefore, the issue of whether the plan was ambiguous as

to attorney's fees was not before the Court, and the Court should not have applied the common-fund doctrine.

What does this decision mean for plan sponsors? *U.S. Airways, Inc. v. McCutchen* informs us that ERISA plan provisions prevail: health care plan sponsors can write provisions regarding reimbursement from recovery, and participants who accept payment of

expenses under those conditions are expected to honor the agreement. The decision also leaves plan sponsors with a decision to make regarding whether to explicitly disclaim the common-fund doctrine in their plan documents. The Court's majority explained that where a plan rejects the common-fund doctrine, people like the plaintiff would make different judgments. Whether such a

change in judgment is a bad thing, or a good thing, is something for plan sponsors to consider as they redesign their health care plans to comply with health care reform. 

Ann M. Caresani is a partner in the employee benefits area of Porter Wright.

PSCA's 66th Annual National Conference

Featured Platinum Sponsor: U.S. Chamber of Commerce

September 9–12, 2013
The Fairmont Princess
Scottsdale, AZ

Your retirement game plan: Winning strategies for the future

If managing a retirement plan were a classic game, how would you view it? Maybe it's "Trivial Pursuit" — I'll never be able to understand all of these regulations. Or how about "Chess" — I'm trying to figure out a move that will convince more employees to participate. Or, perhaps it's "Chutes and Ladders" — There are so many unpredictable ups-and-downs in the financial markets, how can I possibly prepare my participants for that roller coaster ride?

Of course, the game of retirement planning is not like "Wheel of Fortune." You can't spin a wheel and hope for the best. This conference will focus on helping you develop your retirement game plan. We'll discuss the challenges, headwinds, and concerns of plan sponsors, and solid strategies for addressing them. We'll also host trivia contests and other games to encourage collaboration and sharing of ideas.



Register at psca.org

PSCA 