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Supreme Court Resolves Circuit Split in *US Airways v. McCutchen*, Reconfirms Importance of Clear and Uniform ERISA Plan Language



BY DAMIAN D. CAPOZZOLA, ALLISON ULLMAN AND ANDREW PAULSON

On April 16, the U.S. Supreme Court issued its opinion in *US Airways v. McCutchen*, No. 11-1285, 569 U.S. __, 2013 BL 101433 (Apr. 16, 2013)(95 PBD, 5/16/13; 40 BPR 1267, 5/21/13), which resolved a circuit split on a question left unanswered by two previous rulings—*Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204 (2002) and *Sereboff v. Mid Atlantic Med. Services Inc.*, 547 U.S. 356 (2006)(94 PBD, 5/16/06; 33 BPR 1297, 5/23/06)—involving the equitable enforcement provision of ERISA Section 502(a)(3).

The question left open was this: If Section 502(a)(3) entitles plan administrators to seek reimbursement from a beneficiary on theories of equitable relief in certain scenarios, can beneficiaries likewise claim traditional equitable defenses to limit or prevent reimbursement? A majority of circuits had favored the explicit terms of the plan and prohibited equitable defenses that would prevent reimbursement under the terms of the plan. On the other hand, a minority of circuits (including the Third Circuit in *US Airways*) had allowed beneficiaries to raise equitable defenses in such circumstances. The Supreme Court's opinion sides with the majority view, clarifying that the importance of giving consistent and uniform effect to plan language generally trumps the role of equity in resolving actions brought under Section 502(a)(3) based on an equitable lien by agreement, provided that the plan language is sufficiently clear.

Damian D. Capozzola is a health care litigation partner at Crowell & Moring in Los Angeles. He serves as vice chair of the California Law Revision Commission. Allison Ullman is a counsel specializing in employee benefits at Crowell & Moring in Washington. Her practice involves a wide range of employee benefits matters, including health care matters arising under ERISA. Andrew Paulson is a health care litigation associate in Crowell & Moring's San Francisco office. Since joining the firm in 2011, he has litigated cases in federal and state courts throughout California, including cases involving ERISA-governed benefit plans.

Legal Background

The Employee Retirement Income Security Act arose, in part, out of the ashes of Studebaker Corp. Once one of the country's leading automobile manufacturers, Studebaker fell upon hard times and eventually went out of business in the 1960s. In 1963, Studebaker closed its primary production plant, leaving thousands of workers with little to no retirement income. In conjunction with other developments in the late 1960s and early 1970s, momentum grew for federal oversight and regulation of pensions and benefits plans nationwide, culminating with ERISA being signed into law Sept. 2, 1974. Because of this underlying desire to protect workers, consistent and uniform development and application of

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law have been some of the most fundamental concepts of ERISA jurisprudence through its four decades of evolution.

With specific regard to Section 502(a)(3), participants, beneficiaries, and fiduciaries may bring suit under that section to enjoin any act or practice that violates any provision of ERISA Title I or the terms of the plan, or to obtain other appropriate equitable relief to redress such violations or to enforce any provisions of ERISA Title I or the terms of the plan. The statute does not address the availability of equitable defenses or specifically whether a plan may pursue reimbursement of medical expenses it paid in the event that an injured participant recovers damages from the party responsible for the injury.

Prior Cases on Reimbursement Under Section 502(a)(3)

Great-West Life & Annuity Ins. Co. v. Knudson set the stage for the issues *US Airways* ultimately resolved. In *Great-West Life*, the beneficiary (Knudson) was injured in a car accident and received medical benefits from Great-West pursuant to an ERISA-governed plan. Knudson sued the third-party tortfeasor and received a settlement. As part of the settlement, most of Knudson's recovery was placed in a special needs trust, with only a small amount going to Great-West. As a result, Great-West filed suit pursuant to Section 502(a)(3), seeking to enforce provisions of the plan that required beneficiaries to reimburse prior payments made by Great-West after receiving any third-party judgment. Because the beneficiary did not possess the settlement funds (which had been dispersed to a client trust account and the beneficiary's other creditors), the high court held that Great-West was not seeking a category of relief that was typically available in equity. Instead, Great-West sought to obtain a form of legal relief: the imposition of personal liability for the benefits the plan conferred upon the beneficiary. Consequently, the Supreme Court held that the lawsuit was improper under Section 502(a)(3).

However, four years later in *Sereboff v. Mid Atlantic Med. Services Inc.*, the Supreme Court confronted a structurally similar case but reached a different result. Like Knudson, Sereboff had been injured in a car accident, the plan paid medical expenses, and Sereboff sued the third-party tortfeasor and received a settlement. Unlike in *Knudson*, after Sereboff commenced the lawsuit, Mid Atlantic (the plan administrator) had sent letters asserting a lien on anticipated proceeds pursuant to the terms of the plan. Sereboff refused to pay Mid Atlantic, thus prompting Mid Atlantic to bring suit under Section 502(a)(3).

This time, the Supreme Court held that a plan administrator's lawsuit under Section 502(a)(3) for equitable enforcement of a reimbursement provision—applicable to a particular share of specifically identifiable funds in the possession of the beneficiary—constituted an action to enforce an equitable lien by agreement, which is an action available in equity to enforce a contract-based lien. This type of action fit within the categories of equitable relief available under Section 502(a)(3); as a result, the plan administrator properly sought equitable relief under that provision.

In *Sereboff*, however, the Supreme Court left unanswered whether beneficiaries could assert equitable defenses in actions to enforce equitable liens by agreement. The question naturally arose: if a plan can pursue reimbursement on an equitable theory under Section 502(a)(3), shouldn't the beneficiary be able to raise equitable defenses? A circuit split on this issue ensued.

The majority of circuits held that equitable defenses were unavailable in Section 502(a)(3) actions when those defenses would conflict with the written terms of the plan.[1] A minority of circuits, including the Third Circuit (which decided the *US Airways* case), held that, by authorizing ''*appropriate* equitable relief'' under ERISA Section 502(a)(3), Congress intended such relief to be limited by the equitable doctrines and defenses ordinarily applicable in those types of actions.[2] Against this backdrop, the Supreme Court considered *US Airways v. McCutchen*.

US Airways v. McCutchen

In *US Airways v. McCutchen*, the beneficiary, James McCutchen, became totally disabled following a serious automobile accident. US Airways, the ERISA plan administrator, paid $66,866 for his medical expenses. The beneficiary settled a lawsuit involving the automobile accident for $110,000, resulting in a net recovery after attorneys' fees and costs of less than $66,000. US Airways filed suit for ''appropriate equitable relief'' pursuant to Section 502(a)(3). The district court granted US Airways' motion for summary judgment and awarded it the full $66,866 reimbursement. The Third Circuit overturned the district court, remanded the case for further consideration, and ordered the district court to consider the beneficiary's equitable defenses. US Airways appealed the Third Circuit's decision to the Supreme Court.

The beneficiary argued that, when a plan brings an equitable action under Section 502(a)(3) to enforce plan

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[1] *See, e.g., Zurich Am. Ins. Co. v. O'Hara*, 604 F.3d 1232 (11th Cir. 2010)(79 PBD, 4/27/10; 37 BPR 1057, 5/4/10) (''Because ERISA's primary purpose is to ensure the integrity of written, bargained-for benefit plans, the Plan must be enforced as written unless the Plan conflicts with the policies underlying ERISA or application of the common law is necessary to effectuate the purposes of ERISA.'') (internal quotations and citations omitted).

[2] *See, e.g., CGI Technologies & Solutions Inc. v. Rose*, 683 F.3d 1113 (9th Cir. 2012)(120 PBD, 6/22/12; 39 BPR 1233, 6/26/12) (''Absent an express indication that either Congress or the Supreme Court has limited a district court's powers to fashion '*appropriate* equitable relief,' as contended by CGI, we decline to read such a contractual limitation into a statutory term.'').

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terms, certain equitable principles such as the ''double-recovery rule'' (permitting an insurer to recover only the share of the amount the insured received to compensate him or her for the same loss the insurer suffered) and the ''common-fund rule'' (a litigant or lawyer who recovers a common fund for the benefit of other persons is entitled to reasonable attorneys' fees from the fund as a whole) trump plan terms and prevent unjust enrichment. In contrast, the plan argued that equitable principles or defenses could not be employed to defeat the terms of the plan. In an amicus brief, the federal government argued that, although the plan and not equitable principles provides the measure of relief due, courts have inherent authority to apportion litigation costs in accordance with equitable principles, even if this conflicts with the plan's terms.

Relying heavily on *Sereboff*, the Supreme Court held that the plan's lawsuit really sought to enforce an equitable lien by agreement. Such an equitable action ''arises from and serves to carry out a contract's provisions.''[3] Consequently, enforcing an equitable lien by agreement requires holding the parties to their mutual promises. Here, that means applying the terms of the plan, and rejecting rules—such as the double-recovery rule or the common-fund rule—that conflict with the parties' agreement. After all, Section 502(a)(3) does not authorize equitable actions at large, but rather only equitable actions to enforce the terms of the plan. As the high court stated, ''[t]hat limitation reflects ERISA's principal function: to 'protect contractually defined benefits.' ''[4] In short, equitable defenses are not available in Section 502(a)(3) actions based on equitable liens by agreement to the extent those defenses conflict with the terms of the plan.

The Supreme Court then held, however, that, if plan terms are silent or ambiguous on a particular issue, courts must look at the background of ''common-sense understandings and legal principles that the parties may not have bothered to incorporate expressly but that operate as default rules to govern in the absence of a clear expression of the parties' [contrary] intent.''[5] Here, the plan was silent on how to allocate attorneys' fees. This was important because, absent the application of the common-fund rule, after attorneys' fees (a 40 percent contingency fee) McCutchen would have been left with less money than the amount of medical expenses for which US Airways was seeking reimbursement. The court doubted that the parties had expected that the beneficiary ''would pay for the privilege of serving as US Airways' collection agent,'' [6] and concluded that as a result, ''the common fund doctrine provides the appropriate default. . . . Only if US Airways' plan expressly addressed the costs of recovery would it alter the common-fund doctrine.''[7] This had the practical effect of saving McCutchen from potentially having to reimburse US Airways in part out of his own pocket. In a partial dissent to this portion of the opinion, Justice Antonin Scalia (joined by Chief Justice John G. Roberts Jr. and Justices Clarence Thomas and Samuel Anthony Alito Jr.) contended that the question on which the court originally granted *certiorari* presumed the terms were unambiguous (and not subject even in part to a common-fund rule analysis).

Looking Ahead

Ultimately the Supreme Court remanded for further proceedings consistent with the opinion, and the specifics of McCutchen's dispute with US Airways will continue to play themselves out in the lower courts. But the big-picture takeaway for others facing similar issues is that equity cannot override the plain terms of an ERISA plan, so long as those terms are clear.

In light of the ruling in *McCutchen*, plan administrators should carefully review their benefit plans to ensure that their claims provisions are sufficiently unambiguous so as to leave no room for a participant's equitable defenses to trump the provisions of the plan. Particularly in the case of a health plan subject to ERISA, plan administrators should focus on the provisions of the plan that allow it to pursue reimbursement for medical expenses it previously paid in the event that an injured participant recovers damages from the party responsible for the injury. Plan administrators should take care in drafting provisions so as to allow the plan to recover the full amount it paid without being limited by equitable defenses such as the double-recovery rule or the common-fund rule.

ERISA plan participants would also benefit from a familiarity with their plans' claims provisions. Such a familiarity may aid injured participants and their attorneys in formulating a strategy to ensure that participants end up with adequate monetary damages after making payment to the plan of any amounts to which the plan is entitled in the event of recovery against the party responsible for the injury.

Going forward, the rule established by *McCutchen* may make for hard results in specific individual circumstances, but it ultimately serves the greater good of developing a uniform landscape for consistent administration of benefit plans nationwide.

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[3] *US Airways v. McCutchen*, No. 11-1285, 569 U.S. __, 2013 BL 101433, at *6 (Apr. 16, 2013).

[4] *Id.* at *8 (quoting *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 148 (1985)).

[5] *Id.* (quoting *Wal-Mart Stores Inc. Assoc. Health & Welfare Plan v. Wells*, 213 F.3d 398, 402 (7th Cir. 2000)).

[6] *Id.* at *10.

[7] *Id.* at *8, 10.