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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

High Court ERISA Ruling Backs Sanctity Of Plan Language

By **Ben James**

Law360, New York (April 16, 2013, 8:35 PM ET) -- Though the U.S. Supreme Court said Tuesday that US Airways Group Inc. couldn't recoup the full amount it paid an injured worker who later won a six-figure recovery from third parties, attorneys say the high court handed employers a win by holding that reimbursement clauses in Employee Retirement Income Security Act plans should be enforced as long as they are clear.

Former airline mechanic James McCutchen fought US Airways' bid to recover $66,866 that a company health benefit plan shelled out to pay his medical expenses after a 2007 car wreck, and convinced the Third Circuit to rule in November that courts could override benefit plan language. But the Supreme Court vacated that decision in a 5-4 ruling, while still finding that US Airways couldn't recover the full amount because its particular plan was unclear.

"It's a victory of sorts for plans because it basically tells them that if they write their reimbursement plans clearly enough, they can preserve their right to get a dollar-for-dollar recovery," said Myron Rumeld, co-chair of Proskauer Rose LLP's employee benefits, executive compensation and ERISA litigation practice center.

McCutchen retained counsel after the 2007 accident and ended up recovering a total of $110,000, but he was left with just $66,866 after deducting his attorneys' 40 percent contingency fee. US Airways sued to recover the entire $66,866 pursuant to a reimbursement provision in the plan and a section of ERISA that allows for suits seeking appropriate equitable relief, but McCutchen argued that the relief the airline was after wasn't appropriate or equitable.

The Third Circuit sided with McCutchen, concluding that the principle of unjust enrichment overrode US Airways' reimbursement clause because that clause would give the company a windfall and provide McCutchen with less than full payment for his medical bills.

The Supreme Court, however, rejected that finding, saying that unjust enrichment principles didn't trump the applicable contract. But because the plan was silent with respect to the allocation of attorneys' fees, the "common fund doctrine," which says that litigants who secure a recovery for someone else can get back attorneys' fees from that recovery, was the right default rule to fill that gap, according to Tuesday's opinion.

That means US Airways has to shoulder some of the costs and fees incurred by McCutchen in pursuing the $110,000 recovery, as opposed to getting back the full $66,866 it coughed up for his medical care.

But though the high court ruling is a victory for McCutchen, the decision is positive for plans and employer plan sponsors generally, providing certainty that equitable rules will not trump clear plan language and likely cutting down on litigation in the long run, lawyers say.

"It really tells everybody in advance what to expect," Rumeld said. "I think anytime there's more certainty, there's less litigation."

Meanwhile, though the Supreme Court weighing in on the role of equitable defenses in a lawsuits like this one may diffuse similar disputes in the future, management-side ERISA lawyers still need to review ERISA plan language to ensure that it is sufficiently clear and specific.

"Every practitioner who addresses these issues needs to go back to their plans and be be sure there is no room for ambiguity about whether the plan will bear any costs of recovery that the participant incurs," said Gregory Braden, co-chair of Morgan Lewis & Bockius LLP's ERISA litigation practice. "If the plan is not going bear any costs of recovery, that needs to be very clearly stated in all of the plan and other documents that address this issue."

Tuesday's decision confirms that agreements that clearly and definitively state whether the costs and fees a participant incurs going after third parties will reduce a plan's reimbursement will be enforceable. With respect to plans that don't already include clear language, Braden said, "I think you'll see a move in that direction."

"You can rest assured that any conscientious ERISA lawyer is looking at all of the reimbursement provisions in all of the plans they're working on today," added Thompson Hine LLP's Tim McDonald. "I would draft your plan and see if different people read it in the same way before you make it final. That's how you'll know it's clear."

McDonald also said that Tuesday's ruling in the US Airways case — along with the Supreme Court's decision Monday to take up another ERISA case against Wal-Mart Stores Inc. and Hartford Life & Accident Insurance Co. — shows that ERISA is a priority for the high court.

The Supreme Court hasn't been targeting ERISA issues that are prominent in complex class action litigation, but appears to be tackling questions that will help lower courts deal with the slew of individual claims that comprise the bulk of ERISA disputes in district court, Braden said.

"They are focused on getting ERISA to work as efficiently as it can," McDonald said. "This is a statute that's front and center in the court's mind and they are really striving to bring clarity to it."

--Editing by Elizabeth Bowen and Katherine Rautenberg.