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Spring 2014 Attorneys' Alert (Special Edition!)

Happy day for personal injury plaintiffs??

"The Plan! The Plan!"

Have you ever petitioned the Supreme Court for a writ of certiorari?

Have you ever argued before the U.S. Supreme Court?

Has the Supreme Court ever issued an important opinion in one of your cases?

Has that opinion been the subject of C.L.E. seminars?

If you have, you may be among very few attorneys admitted to the Supreme Court.

BUT, even if one of those events has happened to you, you may yet not be prepared for this startling turn of events! Kindly read on!

Does ERISA authorize courts to refuse to order ERISA participants to reimburse their plans for benefits based on equitable principles where the terms of the ERISA plan give the plan an absolute right to reimbursement?

That seemed to be the straightforward issue raised by US Airways' petition for writ of certiorari to the Supreme Court in US Airways, Inc. v. McCutchen, 133 S. Ct. 1537 (U.S. 2013).

But, what if it turned out that US Airways plan in fact neither provided for a right of reimbursement nor mentioned a right to reimbursement from the participant's own uninsured motorist benefits? Seriously! No plan, no reimbursement?

That is exactly what the Amended Answer, Amended Affirmative Defenses and Counterclaim by defendants, McCutchen and his law firm, asserts. On March 17, 2014, the district court allowed McCutchen and his law firm to file that pleading in US Airways, Inc. v. McCutchen, et al., Case 2:08-cv-01593-DSC, Document # 67 (U.S.D.C. W.D. P.A.)

In this extraordinary scenario, the Supreme Court had already proceeded to issue its McCutchen opinion, aware that it was not based on the plan itself:

> "Only in this Court, in response to a request from the Solicitor General, did the plan itself come to light . . . That is too late to affect what happens here." (U.S. Airways, Inc. V. McCutchen, 133 S. Ct. 1537, 1543 n.1 (U.S. 2013).

The Supreme Court went on, however, in its rationale:

> "[t]he terms of the ERISA plan govern."

Defendants McCutchen and his law firm are contending in the district court that the Plan documents, not the Summary Plan Description control US Airways' claim for reimbursement.

To which US Airways replied in opposition that the defendants "never requested the Plan document." Really! The district court discreetly termed this argument "disingenuous."

The district court then laid the blame squarely on US Airways' shoulders for its "failures, whether deliberate or not, during the discovery stage of the litigation." The district court recounted the discovery stage, including US Airways' having sought a protective order– representing to the court that the plan expressly provided for its right to reimbursement. ("Though the Court denied the request for a protective order, US Airways did not produce the Plan . . .")

In its March 17, 2014 Order, the Court allowed McCutchen and his law firm to amend to allow a determination . . . whether the Plan documents allow for reimbursement, and whether US Airways, as the Plan Administrator, breached its fiduciary duty to Mr. McCutchen.

In the next episode of McCutchen, we may find the answers to these questions:

Will McCutchen have to pay the Plan? Will the Plan Administrator have to pay a penalty for failing to furnish the Plan document to McCutchen? Will this case ever end?

BE SURE TO WATCH THIS SPACE FOR FURTHER DETAILS!