Third Circuit Rules that Equitable Principles Should Apply to Limit ERISA Health Plan Recovery from Employee-Beneficiary

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In *US Airways v. McCutchen*,[1] the Third Circuit Court of Appeals applied equitable principles to limit an employer's recovery from its employee for medical expenses paid pursuant to an ERISA health plan, holding that equitable considerations are required by the wording of Section 503(a)(3) allowing relief "appropriate equitable relief" to the employer. In so doing, the Court of Appeals rejected decisions of several other Circuits but took guidance from more recent Supreme Court cases. It remanded the case to the district court to determine whether equity would require a reduction of the repayment to take into account the attorneys' fees paid by the employee to achieve a recovery in his third-party legal claims.

US Airways maintains an ERISA §502 employee health plan. Employee James McCutchen was involved in a tragic automobile accident, outside of his work, in which one person died and three others, including Mr. McCutchen, were seriously injured. He obtained medical treatment for which US Airways paid $66,866. Mr. McCutchen retained a law firm to pursue a claim against the at-fault driver, who had a limited policy to address the claims of all victims. McCutchen accepted a $10,000 payment. His attorneys then made an underinsured motorist claim against Mr. McCutchen's own insurance policy, obtaining a payment of $100,000, for a total recovery to Mr. McCutchen of $110,000. After paying his attorneys' fee of 40 percent, he was left with a net recovery of less than $66,000.

US Airways had designs on that money. Having done nothing to help procure the recovery or to seek its own subrogation claim, the airline demanded that Mr. McCutchen pay the airline the full amount of the medical expenses of $66,866, which was more than McCutchen's net recovery, under the terms of the benefit plan. As the Court of Appeals pointed out, that would leave Mr. McCutchen having to turn over the entire net recovery and dip into his own pocket to satisfy the demand. In a footnote, the Court of Appeals commented that "US Airways' claim to reimbursement from McCutchen's pocket is unprecedented."[2]

Mr. McCutchen refused, arguing US Airways' demand was not equitable. The airline sued him, relying upon the language of the benefit plan and upon ERISA §502(a)(3). The plan language required the employee receiving medical benefits "to reimburse the Plan for the amounts paid for claims out of **any monies recovered** from a third party, including, but not limited to, your own insurance company as the result of judgment, settlement, or otherwise."

US Airways coupled the Plan language with the invocation of Section 502(a)(3), which prescribes the relief available to the employer as an injunction, "or other appropriate equitable relief." It is that language which came under scrutiny by the Third Circuit.

The airline posited that it was entitled to be repaid the full amount of the medical expenses it paid for Mr. McCutchen's medical care out of the full $110,000 recovery without regard to the employee's legal costs in obtaining the recovery. Mr. McCutchen countered that equitable principles must be applied and that the legal costs must be given appropriate consideration.

The district court for the Western District of Pennsylvania sided with US Airways, imposing an equitable lien on $41,500 held in trust by Mr. McCutchen's attorneys and ordering McCutchen to pay the remaining $25,366.00 personally. Mr. McCutchen appealed to the Third Circuit, which vacated the judgment and remanded the case to the district court to determine what would constitute "appropriate equitable relief." In so doing, the Court of Appeals reviewed the history and purpose of ERISA and pertinent judicial treatment by various Circuits Courts of Appeals, and by the Supreme Court. The Third Circuit refused to follow decisions of other Courts of Appeals which framed the issue as whether federal courts may "apply common law theories to alter the express terms of a written plan."[3] The Third Circuit noted that the contrary cases were decided before the Supreme Court decisions in *Great-West Life & Annuity Ins. Co. v. Knudson*,[4] *Sereboff v. Mid Atlantic Medical Servs., Inc.*,[5] and,

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Cigna Corp. v. Amara.[6] These cases address the applicability of equitable principles in the context of ERISA.

Quoting from *Knudsen* and from *Mertens v. Hewitt Assocs*.,[7] the Court of Appeals notes that "ERISA is a comprehensive and reticulated statute, the product of ten years of congressional study of the Nation's employee benefit system. The Circuit Court also stressed that courts have been reluctant to tamper with its carefully crafted enforcement scheme, by which Congress gave plan beneficiaries greater rights than plan fiduciaries to enforce the terms of a benefit plan. "A beneficiary has a general right of action 'to enforce the terms of a benefit plan,'" whereas a fiduciary's right to enforce the plan terms is limited by Section 502(a)(3) to an injunction or "other appropriate equitable relief." In *Mertens*, the Supreme Court held that this modifier, appropriate equitable relief, is not superfluous. Rather, this congressional choice to limit the relief available to the fiduciary "requires us to recognize the difference between legal and equitable forms of restitution."[8] That case dealt with an analysis of the nature of equitable relief "in the days of the divided bench." One feature of equitable restitution was that it sought to impose a constructive trust upon particular funds. The claim failed because the fiduciary failed to identify such still-available funds.

In *Sereboff*, a similar claim by an ERISA plan administrator succeeded as the administrator was able to identify specific funds within the beneficiary's possession or control, the Court holding that the claim could be based on an equitable lien "by agreement." The Court expressly reserved decision on whether "appropriate," which modifies "equitable relief" in §502(a)(3), would render equitable principles and defenses applicable to a claim under that section.

It is that issue that was faced squarely by the Third Circuit: "We disagree with those circuits that have held that it would be pioneering federal common law to apply equitable limitations on an equitable claim. Congress purposefully limited the relief available to fiduciaries under §502(a)(3) to 'appropriate equitable relief.'[9]

In *Cigna*, the Supreme Court also ruled that the importance of the written benefit plan is not "inviolable." It is subject to equitable principles, and can even be equitably reformed under §502(a)(3).

Relying upon its interpretation of these Supreme Court pronouncements, the Third Circuit concluded that the judgment must be vacated:

> Indeed, it would be strange for Congress to have intended that relief under §502(a)(3) be limited to traditional equitable categories, but not limited by other equitable doctrines and defenses that were traditionally applicable to those categories. "Statutory reference to [an equitable] remedy must . . . be deemed to contain the limitations upon its availability."
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> Accordingly, in light of the foregoing reasoning, . . . we find that Congress intended to limit the equitable relief available under §502(a)(3) through the application of equitable defenses and principles that were typically available in equity.[10]

The Court of Appeals emphasizes that this limitation would include application of the principle of unjust enrichment.

Finally, the Court of Appeals stressed that while "one of Congress's purposes in enacting ERISA was to "ensure the integrity of written, bargained for benefit plans," on the other hand (as demonstrated by *Cigna*), Congress expressly tempered that purpose by limiting fiduciaries to "appropriate equitable relief," and "invoking principles that it surely knew are sometimes less deferential to absolute freedom of contract."

Thus, the Circuit Court vacated the judgment of the district court and remanded the case for findings and conclusions as to what would constitute appropriate equitable relief, adding that equity calls for full factual findings rather than the Circuit Court's speculation. The conclusion is that in the opinion of the Third Circuit, the congressional intent was to favor plan beneficiaries, that equitable principles were forged into the ERISA provisions overall, and to permit US Airways to obtain complete reimbursement without sharing in the costs incurred to obtain that recovery is not an equitable result.

Endnotes

1. 663 F.3d 671 (3d Cir. 2011).
2. fn. 3.
3. citing *Admin. Comm. of Wal-Mart Stores, Inc. Assoc. Health & Welfare Plan v. Shank*, 500 F.3d 834 (8th Cir. 2007).
4. 534 U.S. 204 (2002).
5. 547 U.S. 356 (2006).
6. __ U.S. __, 131 S. Ct. 1866, 179 L.E.2d 843 (2011).
7. 508 U.S. 248.
8. *Knudson*, 534 U.S. at 218.
9. 663 F.3d at 678.
10. 663 F.3d at 676.