The Supreme Court Rules on Reimbursement Rights and Attorney’s Fees For Self-Insured Health Plan Participants

The Supreme Court’s recent decision in *US Airways, Inc. v. McCutchen* is by and large good news for employers who sponsor self-insured health plans. The decision affirms a plan’s right to recover up to its full amount of medical benefit costs even if a plan participant only obtains payment of some of his/her damages from the person who caused the injury and/or from other insurance. However, this right of recovery is predicated upon the plan containing appropriate language regarding subrogation and reimbursement, particularly with regard to responsibility for legal fees.

In *McCutchen*, the US Airways health plan paid $66,866 for medical expenses that plan participant James McCutchen incurred in connection with injuries suffered in an automobile accident. Following the accident, Mr. McCutchen filed suit against the other driver and also filed a claim with his own insurance company. He eventually obtained a total recovery of $110,000 for damages estimated in excess of $1 million. Based on a contingency fee arrangement, his attorney in the case was awarded 40% ($44,000) of the recovery, leaving Mr. McCutchen with a net recovery of $66,000.

The Summary Plan Description (“SPD”) for the US Airways health plan stated that “If [US Airways] pays benefits for any claim you incur as the result of negligence, willful misconduct, or other actions of a third party, ... [y]ou will be required to reimburse [US Airways] for amounts paid for claims out of any monies recovered from [the] third party, including, but not limited to, your own insurance company as the result of judgment, settlement, or otherwise.” Based on the language set forth in the SPD, which the parties treated as the governing plan language, the US Airways plan administrator sought to recover the full $66,866 it had paid on Mr. McCutchen’s behalf, even though Mr. McCutchen only received $66,000 after deduction of his attorney’s fees. Mr. McCutchen argued that it would be inequitable to reimburse the US Airways health plan in full when he had not been fully compensated for his injuries, including pain and suffering.

The Supreme Court rejected Mr. McCutchen’s argument, and held that the plan could enforce its right to reimbursement notwithstanding Mr. McCutchen’s partial recovery. In its holding, the Court emphasized that ERISA’s statutory scheme is “built around reliance on the face of written plan documents.” However, the Court also concluded that the SPD was silent as to how legal fees should be allocated in a recovery effort, and that the “common-fund doctrine” provided the appropriate default rule. Under the common fund doctrine, each member of a group that benefits from a common fund (e.g., associated legal fees).

Notably, based on a ruling by a lower court, the parties in the case had assumed that the plan’s language requiring full reimbursement from any recovery was intended to bar a participant from requiring a plan to contribute towards a participant’s attorney’s fees, and the dissent agreed with this position. The Court’s majority opinion nonetheless held that the plan’s language was not sufficiently explicit to “depart from the well-established common-fund rule.” This result demonstrates that a plan must expressly state its intentions if it does not want to be bound by the common fund doctrine.
The *McCutchen* decision is relevant primarily to self-insured plans, since state insurance laws generally set insurers’ obligations for insured plan participants’ legal fees. If you sponsor or administer a self-insured plan, you should take the opportunity to review your plan document and SPD language regarding reimbursement rights. The language should clearly explain the rights of the plan to obtain reimbursement, and should not just provide for the exercise of subrogation rights. The plan also should expressly address the allocation of legal fees in any recovery efforts. Many plans already meet this standard, but some may need to be clarified in the wake of *McCutchen*.

As always, please feel free to contact a member of the Employee Benefits & Executive Compensation group for more information about this article, or for assistance in other matters.