

# **US Airways, Inc., in its capacity as Fiduciary and Plan Administrator of the US Airways, Inc. Employee Benefits Plan, Petitioners, v. James E. McCutchen, et al.,**

Year: 2011

Court: United States Supreme Court

Case Number:

UP filed a brief in opposition to an appeal by US Airways, Inc. seeking reimbursement and subrogation from its employee for ERISA medical benefits in excess of what employees recovered from third-party tortfeasors, including amounts recovered from the employee's personal underinsured motorist coverage. UP argued that equitable reimbursement claims under ERISA must be accompanied by a rule that claims are subject to equitable principles irrespective of contrary plan language, and that courts retain the power to modify any inequitable, unjust or unconscionable terms to bring them into alignment with ERISA's purpose of protecting the interests of the participants in employee benefit plans and their beneficiaries. Or in plain English: It's not fair for an employer or an insurer to get an inappropriate share of compensation paid to an injured employee/insured - especially where employer or insurer didn't do the work to recover the compensation. UPdate: On March 17, 2014, the Trial Court, on remand, took the unusual step of allowing the defendant to file an amended answer more than six years after the case was filed. Because the U.S. Airways failed to produce the "plan documents" until the case reached the U.S. Supreme Court, the Court found that the interests of justice required it. UPdate March 16, 2016: On remand, the District Court held the plain language (of the plan document rather than the summary plan description) reaches only the recovery from the tortfeasor of \$10,000 and not McCutchen's UIM coverage. The Court also holds that the common fund doctrine applies to the recovery of \$10,000 from the tortfeasor since it was not overridden by the plan document. In this analysis, McCutchen keeps all of

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the recovery which comes from UIM and gives up only a portion of the \$10,000 secured from the tortfeasor as a result of the application of the common fund doctrine. The Court declined to assert penalties against the ERISA Plan for its failure to produce the plan document in timely fashion, prior to the Supreme Court proceeding. (Summary provided by Professor Roger Baron, University of South Dakota School of Law an co-author of UP's brief). The decision is attached below.

UP's brief was written pro bono by Tybe Ann Brett of Stember Feinstein Doyle Payne & Kravec, LLC, Mark Debofsky of Daley, Debofsky & Bryant, Professor Roger Baron of the University of South Dakota School of Law, and UP Exec. Dir. Amy Bach.

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