Proskauer

Third Circuit Limits Relief Available to ERISA Welfare Plans Seeking Reimbursement of Medical Expenses

November 17, 2011

In a case of significant importance for plan sponsors and fiduciaries, the U.S. Court of Appeals for the Third Circuit held in *US Airways, Inc. v. McCutchen*, No. 10-3836 (3d Cir. Nov. 16, 2011), that an employee benefit plan was not entitled to full reimbursement of medical expenses it paid to a participant even though the plan provided that the participant was required to reimburse the plan for all amounts paid "out of any monies recovered from a third party." The Court found that, because the participant had not received a complete recovery for his injuries in collateral litigation, full reimbursement to the plan would not be consistent with the terms of Section 502(a)(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(a)(3), which limits recovery to "appropriate equitable relief."

James McCutchen was seriously injured in a car accident. A plan administered by US Airways paid $66,866 for his medical expenses. Because the other driver was underinsured, McCutchen recovered only $110,000 from third parties, of which he received less than $66,000 after paying a forty percent contingency fee and expenses to his attorney in the underlying action. Although the US Airways plan provided that McCutchen was responsible to reimburse the plan "for amounts paid for claims out of any monies recovered from a third party," McCutchen argued that it would be inequitable to require him to reimburse US Airways in full when he had not been fully compensated for his injuries.

Observing that this case squarely presented a question left open in the Supreme Court's decision in *Sereboff v. Mid Atlantic Medical Services, Inc.*, 547 US 356 (2006), the Third Circuit held that Section 502(a)(3)'s requirement that equitable relief be "appropriate" means that a plan fiduciary's recovery from a beneficiary is limited by the equitable defenses and principles that were typically available in equity. The Court found support for its ruling in, among other places, the Supreme Court's recent decision in *Cigna v. Amara*, 131 S. Ct. 1866 (2011), which authorized equitable reformation under Section 502(a)(3) as a remedy for an intentional misrepresentation. Guided by these principles, the Third Circuit concluded that, even though U.S. Airways had not engaged in any misconduct, its recovery was limited by the principle of unjust enrichment. Turning to the facts of the case, the Court viewed the district court's judgment requiring McCutchen to fully reimburse the plan as unjustly enriching the plan, because it left McCutchen with less than full payment of his medical bills. The Court also determined that full reimbursement would amount to a windfall for US Airways insofar as US Airways did not exercise its subrogation rights or contribute to the cost of obtaining a third-party recovery.

The Third Circuit's ruling appears to depart from existing case law in two significant respects. First, the Court applied equitable considerations in circumstances where the plan provisions specifically addressed the reimbursement issue and were not found to be ambiguous. Second, using its equitable authority, the Court reformed the plan without finding that the conditions for reformation identified in *Amara* had been satisfied. For this reason, the Third Circuit's ruling could potentially lead to a significant, and unexpected, expansion of the application of equitable considerations, not only in connection with plan reimbursement provisions, but possibly elsewhere.

Related Professionals

- **Russell L. Hirschhorn**
  Partner