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Clear Win for ERISA Health Plans

Early this week the United States Supreme Court issued an important decision for health plans seeking to enforce their rights to reimbursement with respect to third party recoveries. The case, US Airways v. McCutchen, 569 U.S. ___ (2013), deals with the common situation where a health plan participant receives a settlement on account of a third party injury and the plan seeks reimbursement of the medical expenses it paid on the participant's behalf with respect to the injury. In a clear win for plan sponsors, the Supreme Court held unanimously that an express provision in the plan document authorizing the plan to seek reimbursement from third party recoveries will trump any equitable defenses, like unjust enrichment, that may be asserted by the participant.

The Supreme Court also held in a 5-4 split that because the health plan failed to address the allocation of recovery costs (i.e., attorney's fees, which in this case were 40% of the recovery), the Court could look to equitable rules to determine how the allocation should be done. In that regard, the Court concluded that the appropriate default should be the "common-fund" doctrine, meaning all the parties must share the recovery costs. According to the Court, if a plan sponsor wants to avoid application of the common-fund rule, the plan document must be drafted to expressly reject that rule.

The bottom line for plan sponsors – careful drafting of the plan document and related summary plan description is the key to enforcement of a health plan's right of reimbursement from third party recoveries. In light of this decision, plan sponsors should review the subrogation and reimbursement provisions in their plan documents and summary plan descriptions, and make needed revisions.