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BENEFITS ALERT: McCutchen Follow-Up

Revisiting Plan Language

In our Benefits Alert to you about the *McCutchen v. U.S. Airways* case, we focused on subrogation clauses in health plans and how they should be drafted in light of the Supreme Court's ruling. Looking at the case from a broader perspective, however, we recommend that all plans be amended to allow trustees to pursue claims against participants (and beneficiaries) for erroneous payments and benefits.

While plans may recoup these payments through, e.g., the IRS correction program or by filing a civil suit, adding language to a plan would give it a contractual right to seek recovery as well. Such a right would be bolstered by the ruling in *McCutchen* (which provides that in situations where a plan is seeking recovery, the plan terms control).

We would be happy to review your plans and add appropriate language.

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