

PUBLIC JUSTICE E-LERT

AMERICA'S PUBLIC INTEREST LAW FIRM

November 18, 2011

Four years ago, James McCutchen's life forever changed. A mechanic for U.S. Airways, he was in his car when another vehicle crossed the median, swerved into his lane and slammed head-first into him. McCutchen required emergency surgery and suffered serious injuries leaving him permanently disabled.

After U.S. Airways' insurer paid \$67,000 for McCutchen's medical expenses, he recovered only about 10 percent of his total damages from third parties, including the driver who caused the accident. But McCutchen's insurer then turned around and sued him for *all* of the money it paid -- a practice known, in the legal world, as "ERISA reimbursement."



U.S. Airways' health insurance plan relied on contract language to argue that it was entitled to all of its money no matter how much McCutchen recovered from third parties. We think this type of demand on an injury victim is patently unfair and violates the most basic requirements of the Employee Retirement Income Security Act (ERISA).

Now, I'm thrilled to tell you, for the first time [a federal appeals court has agreed](#).

In [U.S. Airways v. McCutchen](#), the U.S. Court of Appeals for the Third Circuit just held that an insurer is *not* entitled to 100 percent reimbursement of paid medical expenses when an injured employee has recovered only a fraction of his damages from a third party. In so ruling, the Third Circuit became the first court in the country to place clear limits on employer-based insurers' ability to recover medical expenses from injury victims.

This decision will strongly dissuade insurers from reaching into beneficiaries' pockets to take money that does not rightfully belong to them. And it represents a landmark victory for employee rights and injury victims across the country.

For their groundbreaking work on this case, please join me in thanking Public Justice's Kazan-Budd Attorney Matthew Wessler and Senior Attorney Leslie Brueckner, who represented James McCutchen on appeal. Thanks, also, to our excellent co-counsel, Jon Perry and Paul Hilko of Rosen Louik & Perry P.C in Pittsburgh.

Public Justice is handling an appeal of the same issue in [CGI v. Rose](#), now pending before the Ninth Circuit. For further details, see [Leslie and Matt's recent Access to Justice article](#) on ERISA reimbursement.

Thanks, as always, for your support. Have a wonderful Thanksgiving.

Arthur Bryant
Executive Director
Public Justice and the
Public Justice Foundation