No. 11-1285

IN THE

Supreme Court of the United States

U.S. AIRWAYS, INC. in its capacity as Fiduciary and Plan Administrator of the U.S. AIRWAYS, INC. EMPLOYEE BENEFITS PLAN,

Petitioner,

v.

JAMES E. MCCUTCHEN AND ROSEN, LOUIK & PERRY, P.C.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF OF AMICUS CURIAE CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE

The Central States, Southeast and Southwest Areas Health and Welfare Fund ("Central States" or the "Fund") respectfully submits this brief as amicus curiae in support of the petitioner, U.S. Airways, Inc.[1] The parties have filed a blanket consent to the filing of amicus curiae briefs with the Court.

Central States is a multiemployer employee welfare benefit plan as that term is defined in Section (3)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1002(1). *See Central States, SE & SW Areas Pension Fund v. Central Transport, Inc.*, 472 U.S. 559, 561-562 (1985). Central States is a non-profit, tax qualified, Taft-Hartley trust, administered by eight trustees, four appointed by contributing employers and four elected by the unions whose members are participants and beneficiaries of the Fund. *See* 29 U.S.C. § 186.

Central States provides medical, hospital, dental, vision, life and disability benefits to more than two hundred and forty thousand covered employees and their dependents who reside in forty-nine states, the District of Columbia and Puerto Rico. Central States is self-funded and pays benefits directly from the

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[1] In compliance with Rule 37 of this Court, counsel for Central States represents that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus*, its employees, or its counsel made a monetary contribution to the preparation or submission of this brief.

contributions it receives from participating employers. As noted above, Central States is a not-for-profit trust, and its assets are used exclusively to provide benefits for participants and beneficiaries and to defray the reasonable costs of administering the benefit plan. *See* 29 U.S.C. § 1104(a)(1)(A).

The participants in Central States work for employers who have entered into collective bargaining agreements with the International Brotherhood of Teamsters (IBT) or work for IBT local unions that have agreed in writing to contribute to the Fund. These agreements require employers to pay a certain level of contributions to Central States in return for a set benefit plan offered by the Fund for that particular contribution level. Each contributing employer executes a participation agreement with Central States agreeing, among other things, to pay the required contributions and to abide by a Trust Agreement and all the rules and regulations set by Central States' Trustees who administer the Fund. Central States is administered pursuant to the terms of the Trust Agreement and the benefits provided by the Fund are detailed in a Plan Document.

Like most health plans, Central States' Trustees have implemented prudent measures to control and recover costs, including the adoption of subrogation and reimbursement provisions. *See* 29 U.S.C. § 1104(a)(1)(B). These subrogation and reimbursement provisions, in summary, grant the Fund immediate subrogation rights to all present and future rights of a covered individual to recover for injuries resulting in medical treatment covered by the Fund. That is, the Plan Document grants Central States an immediate assignment of a covered

individual's loss recovery rights to the extent it pays any benefits on behalf of the individual relating to his or her injury or disability. Pursuant to the Plan Document, a covered individual may not make a settlement or other distribution of his loss recovery rights without the written consent of Central States and any settlement shall not relieve the covered individual of his or her obligation to reimburse Central States the full amount of its subrogation rights. The Plan Document further provides that Central States is not financially responsible for any expenses, including attorneys' fees, incurred on behalf of the covered individual in the enforcement of his loss recovery rights, except as expressly authorized by the Fund. The Trustees are vested with discretionary and final authority in making decisions that interpret plan documents relating to subrogation. The Plan Document also provides that whenever the Fund has made benefit payments which exceed the amount of the benefits payable under the terms of the Plan, the Fund shall have the right to recover excess payments from any responsible person or entities. A recent internal audit disclosed that, pursuant to these subrogation and reimbursement provisions, Central States has realized gross recoveries and savings in excess of $133.5 million since the inception of its present subrogation program in 1984. Annual gross recoveries from this program during the past ten years (2002-2011) have averaged $5.7 million with a high of $7.03 million in 2011.

Contribution rates and corresponding benefit levels for employers who contribute to Central States on behalf of their covered employees, and deductibles and co-payments, are set by the Trustees after consultation with actuaries who rely upon vari-

ous assumptions, one of which is the assumption that the Fund will be administered pursuant to the terms of its Plan Document. One of the key actuarial assumptions is that the subrogation and reimbursement provisions of the Plan (along with all other Plan terms) will be consistently applied and enforced as written. Recoveries under the subrogation and reimbursement provisions of the Plan are thus necessary to properly and predictably set contribution rates needed to fund the benefit levels stated in the various benefit plans offered by Central States. As noted above, the contribution rates paid to Central States by participating employers are set forth in collective bargaining agreements entered into between these employers and affiliates of the IBT. Therefore, Central States cannot unilaterally increase contribution rates and because these collective bargaining agreements typically cover periods of three years, it is impossible for the Fund to quickly adjust contribution rates to account for the loss of anticipated revenue and unanticipated expenses. If subrogation and reimbursement recoveries are reduced, benefits provided to beneficiaries may need to be correspondingly reduced to preserve plan assets, and eventually, contribution rates will need to be increased.

The resolution of the issues in this case will have a significant impact not only upon Central States, but upon the administration of other self-funded, multiemployer employee welfare benefit plans which rely upon similar subrogation and reimbursement rules set forth in plan documents. If the decision below is not reversed, such plans will not be able to rely on their plan provisions relating to subrogation and reimbursement because the Third Circuit's decision

authorizes courts to ignore the application of such rules on a case by case basis. The resolution of this case also has a substantial impact upon such plans in that, if the Third Circuit's opinion is not reversed, legal expenses incurred by Central States and all similar plans will increase dramatically, further eroding the financial stability of such plans.

SUMMARY OF THE ARGUMENT

Central States seeks to bring to the Court's attention the negative impact which the Third Circuit's decision will have on self-funded multiemployer employee welfare benefit plans, particularly those whose beneficiaries reside in many different states. This decision renders it impossible for such plans or their beneficiaries to rely on the terms of their written plan documents, makes setting rates a guessing game, significantly increases such plans' administrative costs and ensures a sharp increase in litigation. In so doing, the Third Circuit's opinion undermines ERISA's goals of ensuring uniformity and predictability in plan administration and in preserving the financial integrity of employee benefit plans.

ERISA's statutory scheme is built around reliance on the face of written plan documents. The Third Circuit's opinion runs contrary to this mandate by authorizing courts to rewrite plan documents whenever they determine that it would be inequitable to enforce the unambiguous plan terms as written. The Third Circuit's opinion, however, is flawed in several respects. First, the opinion ignores the fact that Section 502(a)(3) of ERISA does not authorize "appropriate equitable relief" *at large*, but only for the purpose of enforcing any provision of ERISA or

the plan. The Third Circuit's opinion does the opposite. It authorizes courts to fashion equitable defenses for the specific purpose of disregarding the express terms of the plan. This is inconsistent with ERISA's explicit requirement that plans be enforced as written which fosters Congress' goals of providing certainty for participants and beneficiaries as well as plan administrators and ensuring uniformity in the regulation and funding of such plans.

The Third Circuit also incorrectly concluded that it would "undermine the entire purpose of the plan" to allow the plan to recover from McCutchen because it would leave him with less than full payment for his medical bills. However, plan trustees are required to discharge their duties taking account the interests of all beneficiaries of the plan. Moreover, ERISA was not intended to assure full payment for all medical bills, but to assure full payment of benefits promised under the written plan terms (which in this case also includes reimbursement provisions). And, the Third Circuit's opinion incorrectly favors the interests of one individual beneficiary at the expense of all of the plan's other beneficiaries. Finally, the court's reliance on this Court's opinion in *CIGNA Corp. v. Amara*, ____U.S. ____, 131 S.Ct. 1866 (2011), as authority for its ruling is also misplaced as that decision does not authorize the reformation of plan documents in all circumstances, but instead limited this extraordinary relief to situations involving fraud. Because no fraud is present in the *McCutchen* case, *CIGNA Corp.* does not support the Third Circuit's reformation of the relevant plan document.

The *McCutchen* decision also runs afoul of another

of ERISA's stated goals by threatening the financial integrity of employee welfare benefit plans. Reimbursement and subrogation provisions are crucial to the financial viability of self-funded ERISA plans. Because benefit levels and corresponding rates are based upon actuarial assumptions which assume a certain predictable level of subrogation and reimbursement recoveries, such recoveries are necessary to fund the benefit levels stated in the various plans offered. The Third Circuit's opinion ensures that such recoveries will be reduced and makes it virtually impossible for the Fund's actuaries to predict what these recoveries will be. As a result, there is an increased risk that the rates set by Central States may ultimately be insufficient to pay for the corresponding benefits level leaving the fund with a deficit. Exacerbating this problem is the fact that because the contribution rates paid to Central States (as well as other multiemployer plans) are incorporated into collective bargaining agreements which are typically three years in duration, the Fund has no way of quickly increasing contributions to make up for any shortfalls.

Finally, the Third Circuit's opinion further threatens the financial integrity of employee benefit welfare plans by opening the floodgates of litigation with such plans. Because the opinion invites courts to evaluate the equities on a case-by-case basis, it is a certainty that litigation costs will increase dramatically. Since each dollar spent in litigation costs is a dollar unavailable to pay benefits, this further threatens the financial integrity of employee welfare benefit plans.

ARGUMENT

I. ALLOWING COURTS TO USE EQUITABLE PRINCIPLES TO REWRITE CONTRACTUAL PLAN LANGUAGE REQUIRING PARTICIPANTS TO REIMBURSE EMPLOYEE WELFARE BENEFIT PLANS FOR BENEFITS PAID WOULD FRUSTRATE THE POLICIES UNDERLYING ERISA AND THREATEN THE FINANCIAL INTEGRITY OF SUCH PLANS.

A. The Third Circuit's Decision Is Inconsistent With ERISA's Goal Of Ensuring Uniformity And Predictability In Plan Administration And Funding.

In enacting ERISA, Congress recognized that because the continued well-being and security of millions of employees and their dependents are directly affected by employee benefit plans, such plans are affected with a national public policy interest. 29 U.S.C. § 1001(a). Accordingly, one of the stated goals in enacting ERISA was to protect the financial soundness of such plans. *Id.* Congress further stressed the importance of uniform federal regulation of such plans and the need to protect contractually defined benefits. *Id.*

Both ERISA's legislative sponsors and this Court have emphasized the necessity for uniform federal regulation of not only the substantive provisions of the statute, but also the enforcement provisions applicable to ERISA plans. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 99 (1983) (quoting 120 Cong. Rec. 19933 (1974));

See also FMC Corp. v. Holliday, 498 U.S. 52, 60 (1990). As this Court has recognized, one of ERISA's primary policies is to induce employers to offer benefits "by assuring a predictable set of liabilities, under uniform standards of primary conduct and a uniform regime of ultimate remedial orders and awards when a violation has occurred." *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 379 (2002) (citations omitted). To achieve this objective ERISA requires that "every employee benefit plan shall be established and maintained pursuant to a written instrument" and mandates that named fiduciaries control and manage the operation and administration of the plan. 29 U.S.C. § 1102(a)(1). Further, each trustee has a fiduciary duty to "discharge his duties inaccordance with the documents and instruments governing the plan. . . ." 29 U.S.C. § 1104(a)(1)(D). The courts have consistently emphasized the primacy of plan provisions absent a conflict with the statutory policies of ERISA. *Admin. Comm. of Wal-Mart Stores, Inc. v. Varco*, 338 F.3d 680, 691-92 (7th Cir. 2003) (citing cases). The Third Circuit's opinion runs directly contrary to these congressional mandates by authorizing courts under the rubric of equity to rewrite plan documents and ignore unambiguous plan terms thus undermining the very uniformity and reliance upon such documents which Congress sought to ensure in enacting ERISA.

ERISA's enforcement provision specifically provides that a civil action may brought:

> (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equi-

> table relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan.

29 U.S.C. § 1132(a)(3). This Court has directed that when courts consider the meaning of "appropriate" equitable relief as used in this provision, they should "keep in mind the special nature and purpose of employee benefit plans." Varity Corp. v. Howe, 516 U.S. 489, 515 (1996). One of the repeatedly emphasized purposes of ERISA is to protect and ensure the financial integrity of contractually defined benefits. *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 148 (1985); *Admin. Comm. of Wal-Mart Stores, Inc. v. Shank*, 500 F.3d 834, 838 (8th Cir. 2007). In light of these directives, courts have been reluctant to authorize the use of common law equitable defenses to alter the express terms of a written plan.

This Court in *Sereboff v. Mid Atl. Med. Servs., Inc.*, 547 U.S. 356 (2006), specifically held that employee benefit plans can enforce reimbursement and subrogation provisions under 29 U.S.C. § 1132(a)(3) because such provisions establish an equitable lien by agreement. Left open by this decision, however, was the question of whether plan participants can utilize equitable defenses to defeat unambiguous reimbursement and subrogation provisions. Prior to the Third Circuit's opinion in *McCutchen*, all the courts of appeal that considered this issue declined to read Section 502(a)(3) of ERISA as allowing equitable defenses and uniformly held that unambiguous subrogation provisions contained in plan documents should be

enforced as written.[2] These courts correctly recognized that Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), "does not authorize 'appropriate equitable relief' *at large*, but only 'appropriate equitable relief' for the purpose of...'enforci[ng] any provisions' of ERISA or an ERISA plan." *Shank*, 500 F.3d at 838, citing *Mertens v. Hewitt Assoc.*, 508 U.S. 248, 253 (1993). (emphasis in original).[3] This is the critical point which the McCutchen court misses. The term "appropriate equitable relief" is limited in the statute in that it can only be utilized for the purpose of enforcing the provisions of ERISA or the terms of the plan. The Third Circuit's opinion does the opposite. It authorizes courts to fashion equitable defenses in order to disregard the terms of the plan. This runs counter to ERISA's repeatedly emphasized purposes of protecting contractually defined benefits, providing for a uniform set of regulations and securing the financial integrity of employee benefit plans.

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[2] See *Zurich Am. Ins. Co. v. O'Hara*, 604 F.3d 1232 (11th Cir. 2010); *Admin. Comm. of Wal-Mart Stores, Inc. v. Shank*, 500 F.3d 834 (8th Cir. 2007); *Admin. Comm. of Wal-Mart Stores, Inc. v. Varco*, 338 F.3d 680 (7th Cir. 2003), *Bombardier Aerospace Emp. Welfare Benefits Plan v. Ferrer, Poirot & Wansbrough*, 354 F.3d 348 (5th Cir. 2003). See also *Admin. Comm. of Wal-Mart Stores, Inc. v. Wells*, 213 F.2d 398 (7th Cir. 2000).

[3] On June 20, 2012 the Ninth Circuit adopted the *McCutchen* holding in *CGI Tech. & Solutions, Inc. v. Rose*, 683 F.3d 1113 (9th Cir. 2012), thus deepening the circuit split.

The Third Circuit in *McCutchen* held that the plan was seeking relief which was not "appropriate equitable relief" as that term is used in 29 U.S.C. § 1132(a)(3). The Court reasoned that the judgment constituted "inappropriate and inequitable relief" because the amount of the judgment exceeded the net amount of McCutchen's third-party recovery. *U.S. Airways, Inc. v. McCutchen*, 663 F.3d 671, 679 (3rd Cir. 2011). The Court held that allowing such a recovery would "undermine the entire purpose of the Plan." *Id.* This reasoning, however, is flawed in several respects, particularly when applied to multiemployer welfare benefit plans such as Central States. First, it ignores the fact that the unambiguous plan language providing for reimbursement and subrogation established, as this Court in *Sereboff* recognized, an equitable lien by agreement. Such plan language confers benefits on both parties, not just the plan. In exchange for promising to reimburse the plan from any third party recoveries, the participant receives the certainty that the plan will pay his/her medical bills immediately if they are injured. See generally *Admin. Comm. of Wal-Mart Stores, Inc. v. Shank*, 500 F.3d 834, 839 (8th Cir. 2007); *Admin. Comm. of Wal-Mart Stores, Inc. v. Varco*, 338 F.3d 680, 692 (7th Cir. 2003). The Third Circuit's opinion completely ignores the parties' equitable lien by agreement. Instead, it allows one party (the participant) to reap the benefit of the agreement but deprives the other party (the plan) of its side of the bargain. Contrary to the Third Circuit's reasoning, the recovery sought by the plan was entirely consistent with the plan's purpose and

design and simply sought to enforce the parties' agreement.

It also bears noting that if Third Circuit's opinion is allowed to stand, multiemployer plans will be forced to reconsider their policies of advancing payment for medical bills related to injuries sustained in accidents. If benefit plans cannot rely upon the consistent and uniform enforcement of their subrogation rights, and in order to avoid having one employer subsidize the benefits of another employer's employees, multiemployer plans could add plan provisions to exclude from coverage claims related to accidents or simply delay paying such claims. However, the prompt payment of medical expenses by Central States benefits all of the Plan's beneficiaries because the Fund has contracted with medical service providers for substantial discounts in exchange for prompt payment. If the plan is modified to exclude or delay payment for claims related to accidents, it would result in the loss of these discounts afforded to the plan (and its participants) for prompt payment. Although such a course of action would potentially compensate for lost subrogation and reimbursement recoveries, this added layer of administration would delay payment of a beneficiary's benefits, subject the beneficiary to collection efforts from unpaid providers, increase the cost of medical coverage and increase the cost of administering the plan.

The *McCutchen* court also incorrectly held that it was appropriate to reform the plan under the guise of equitable reformation. As authority for this holding,

the Third Circuit cited this Court's decision in *CIGNA Corp. v. Amara*, for the proposition that:

> ... the importance of the written benefit plan is not inviolable, but is subject - based upon equit-able doctrines and principles - to modification and, indeed, even equitable reformation under § 502(a)(3).

U.S. Airways, Inc. v. McCutchen, 633 F.3d at 678 citing *CIGNA Corp. v. Amara*, ___ U.S. ___, 131 S.Ct. 1866, 1879 (2011). The Third Circuit, however, is reading *CIGNA Corp.* in an overly expansive fashion. In *CIGNA*, this Court recognized that the traditional power of an equity court to reform contracts is a power that was used to prevent fraud. The Court did not authorize the reformation of plan documents for any other reason. *Id. CIGNA Corp.* is consistent with the well settled rule that a court of equity cannot change the terms of a contract absent fraud, accident or mistake. *Mfrs' Finance Co. v. McKey*, 294 U.S. 442, 449 (1935). The Third Circuit's reading of *CIGNA* as *carte blanche* authority for courts to rewrite the unambiguous terms of ERISA welfare benefit plans whenever they feel it would be inequitable to enforce the terms as written, is simply erroneous.

As noted above, the Third Circuit concluded that requiring McCutchen to provide full reimbursement to the plan would constitute inappropriate and inequitable relief because it would leave McCutchen with less than full payment of his medical bills. *U.S. Airways v. McCutchen*, 663 F.3d at 679. The Court reasoned that this would undermine the entire purpose of the plan. *Id.* This analysis mis-

construes the purpose of such plans and the duties of plan trustees. The trustees of such plans are required to discharge their duties solely in the interest of *all* of the participants and beneficiaries of the plan. 29 U.S.C. § 1104(a). Although McCutchen himself will be a better position if the Third Circuit's opinion is allowed to stand, the interests of all other members of the plan will be jeopardized. Reimbursement pursuant to a plan's subrogation and reimbursement provisions inures to the benefit of all participants and beneficiaries of the plan by reducing the total cost of the plan. If McCutchen is relieved of his obligation to reimburse the plan, the costs of those benefits will be borne by other members of the plan in the form of higher premium payments or reduced benefits. As noted, plan trustees are required to discharge their duties by taking impartial account of the interests of *all* beneficiaries of the Plan. *Varity Corporation v. Howe*, 516 U.S. 489, 514 (1996). The Third Circuit's opinion improperly favors the interests of one individual beneficiary at the expense of all of the plan's other participants and beneficiaries. Because the ruling is based upon a flawed interpretation of fiduciary duties and is inconsistent with ERISA's purposes of protecting contractually defined benefits and providing for uniformity of regulation, it should be reversed.

B. The Third Circuit's Decision Is Inconsistent With ERISA's Goal Of Protecting The Financial Integrity Of Employee Welfare Benefit Plans.

Central States, like many employee welfare benefit

plans, contains subrogation language in its plan document which requires a beneficiary who is injured as a result of an act or omission of a third party to reimburse the plan for benefits it pays on account of those injuries, if the beneficiary recovers for those injuries from a third party. Such reimbursement and subrogation provisions are important to the financial viability of self-funded ERISA plans. Central States, for example, has achieved gross recoveries and savings totaling in excess of $133.5 million since the inception of its present subrogation and reimbursement program in 1984. Gross recoveries from this program during the past ten years have averaged $5.7 million per year with a high of $7.03 million in 2011. Since contribution rates are based on actuarial assumptions which assume a certain and predictable level of subrogation and reimbursement recoveries, these recoveries are necessary to provide assets sufficient to fund the benefit levels stated in the various benefit plans offered by Central States. If the Third Circuit's opinion is not reversed, subrogation and reimbursement recoveries will obviously be reduced. In addition, it will be difficult, if not impossible, for Central States' actuaries to predict with any degree of certainty what those recoveries will be. As a result, the contribution rates set by the Fund may not be sufficient to pay for the corresponding benefit level leaving the Fund with a deficit. Moreover, as noted earlier, the contribution rates paid to Central States by participating employers are set forth in collective bargaining agreements entered into between these employers and affiliates of the IBT. Thus, Central States cannot unilaterally increase rates, and because these agreements typically cover periods of three years, it is impossible for the Fund to quickly adjust

rates to account for the loss of anticipated revenue and unanticipated expenses. As a result, if subrogation and reimbursement recoveries are reduced resulting in the rates not supporting the corresponding benefit level, benefits provided to beneficiaries may need to be correspondingly be reduced to ensure that the Fund has sufficient assets to pay its obligations and eventually, contribution rates will need to be increased. There can be no question that the negative impact of the Third Circuit's decision on Central States and other large multiemployer welfare benefit plans, as well as their beneficiaries, will be substantial.

The Third Circuit's opinion will also introduce uncertainty and significant litigation costs into plan administration. Instead of ensuring ERISA's policy of uniform enforcement of employee benefit plans in accordance with the plain meaning of the plan's terms, the decision below will have the opposite effect. Large multiemployer welfare benefit plans such as Central States will have absolutely no ability to predict with any degree of certainty how its plan will be enforced. Because the Third Circuit's opinion authorizes courts to enforce or modify a plan's subrogation language on a case by case basis, based upon each court's subjective notion of what is "appropriate" under the circumstances, Central States' contractual plan language will be enforced against some beneficiaries in one region of the country but not against others who live somewhere else. Of course, because the outcomes in each instance are impossible to predict, the actuarial assumptions underlying the setting of rates and benefit levels will be difficult to develop and rely upon. Needless to say, such a scenario places a heightened risk on the financial integrity of such plans.

In addition to the uncertainty and financial risks inherent in the Third Circuit's decision, there will also be a major increase in litigation costs associated with the administration of employee welfare benefit plans as the decision will open the floodgates of litigation with such plans. Because the Third Circuit's opinion invites courts to evaluate the "equities" of each case, regardless of unambiguous contractual plan language, it is a certainty that litigation costs will rise exponentially. As one district court recently recognized in criticizing the Third Circuit's opinion:

> For each person whom a court in "fairness" allows to skip repayment, there will blossom many lawsuits from others who aspire to skip re-payment (and why not; they may get lucky; under *McCutchen*, all depends - the ERISA plan aside - on the contingency of a court's conscience). The losers again, are the other beneficiaries.

Schwade v. Total Plastics, Inc., 837 F.Supp.2d 1255, 1278 (M.D. Fla. 2011). The addition of such uncertainties and additional litigation will significantly increase the costs of employee welfare benefit plan administration.

C. The Third Circuit's Opinion Is Inconsistent With ERISA's Goal Of Encouraging Resolution Of Benefits Disputes Through Internal Administrative Proceedings Rather Than Through Litigation

Consistent with ERISA's goals of uniformity of interpretation and ensuring the financial integrity of plans discussed above, ERISA encourages the resolution of benefits disputes through internal administrative proceedings rather than through time consuming

and costly litigation. *Conkright v. Frommert*, ___ U.S. ___, 130 S.Ct. 1640, 1649 (2010). In determining the proper standard of review to be applied to decisions of ERISA plan administrators, this Court has determined that if the trust documents grant the trustees the power to construe disputed or doubtful terms, the trustees' interpretation will not be disturbed as long as it is reasonable. *Firestone Tire and Rubber Company v. Bruch*, 489 U.S. 101, 111 (1989). As this Court has noted, this deferential arbitrary and capricious standard of review:

> . . . promotes efficiency by encouraging resolution of benefits disputes through internal administrative proceedings rather than costly litigation. It also promotes predictability, as an employer can rely on the expertise of the plan administrator rather than worry about unexpected and inaccurate plan interpretations that might result from de novo judicial review. Moreover, *Firestone* deference serves the interest of uniformity, helping to avoid a patchwork of different interpretations of a plan. . .

Conkright, 130 S.Ct. at 1649.

This deferential standard of review is particularly appropriate when applied to multiemployer welfare benefit plans, such as Central States, which are not for profit trusts that are administered by boards of trustees composed equally of representatives of labor and management. Because of these attributes, the trustees of such plans act with no conflict of interest. Thus, the concerns over conflict of interest which are sometimes a concern when an insurance company is both plan administrator and insurer of benefits, or when the employer is the administrator

of a self-funded single-employer plan, are not present with not for profit multiemployer welfare benefit plans. When such plans pay the medical expenses of a participant or beneficiary who is injured in an accident, and the participant or beneficiary recovers a settlement or award against a responsible third party, to the extent the trustees seek to recover the full amount of the plan's claim, they are not seeking a windfall for shareholders or investors, but are only seeking to preserve plan assets for the benefit of all of the plan's participants and beneficiaries. The Trustees thus discharge their fiduciary duty to administer the plan in strict accordance with the documents and instruments governing the plan as mandated by ERISA. The Trustees also have the benefit of making decisions based on evaluation of their effect on the plan as a whole and all of its participants and beneficiaries. The Third Circuit's opinion, on the other hand, shifts the primary responsibility for plan administration and enforcement from trustees to district courts. Further, the opinion invites courts to evaluate plan enforcement in the vacuum of a single case, without regard for its impact on the plan as a whole. This approach is not consistent with ERISA and places the viability of multiemployer employee welfare benefit plans in jeopardy.

CONCLUSION

It is undeniable that the Third Circuit's decision will have a major negative impact on Central States and other multiemployer employee welfare benefit plans and also upon such plans' participants and beneficiaries. Applying federal common law to override a plan's unambiguous reimbursement and subroga-

tion provisions, as authorized by the Third Circuit, undermines, rather than effectuates, ERISA's goals of ensuring uniformity and predictability in plan administration and in preserving the financial integrity of employee welfare benefit plans. The decision also opens the floodgates of litigation for employee welfare benefit plans further eroding plan resources. For these reasons, Central States respectfully requests that this Honorable Court reverse the decision of the Third Circuit in this case.

Respectfully submitted,

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