<u>EQUITABLE RIGHTS OF EMPLOYEE HEALTH BENEFIT PLANS</u>

Employee Retirement Income Security Act (ERISA), 29 U.S.C. 1001 et seq.

To Reader:

During the course of this article we will incorporate quotes from cases that could be confusing. For example the plaintiff (loosely called the insurer) could be the Plan Administer/Plan Fiduciary and the defendant being the Plan Member (the insured). When the position of parties is not otherwise self-explanatory we will use "P" for the plan and "M" for the member.

ERISA includes an enforcement regime that relies, almost exclusively, on civil litigation. Section 502(a) of ERISA, 29 U.S.C. § 1132(a), lists the persons empowered to bring a civil action under the Act. It provides in relevant part:

A civil action may be brought—

(1) by a participant or beneficiary—

* * * * * * *

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) ***to obtain other appropriate equitable relief*** (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan[.]

§ 1132(a)(1)-(3) (emphasis added).

The third remedy, provided in § 502(a)(3), is the "catchall" remedy. Section 502(a)(3) claims permit the recovery of "*appropriate equitable relief*" for any violation of the plan or statute. The Supreme Court has held that "appropriate equitable relief" means such relief as was "typically available" in equity in the days of the divided bench, reasoning that a contrary interpretation—namely, one that would allow a plaintiff to bring an action for monetary damages, "the classic form of legal relief"—"would limit the relief not at all" and "render the modifier [equitable] superfluous." *Mertens v. Hewitt Assocs*., 508 U.S. 248, 255-56 (1993); *see CIGNA Corp. v. Amara*, 131 S. Ct. 1866, 1878 (2011); *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 210 (2002). Accordingly, the relief available under § 502(a)(3) demands a historical inquiry: only if there existed at equity a historical analog to the claim being asserted can a § 502(a)(3) claim lie. *See CIGNA Corp.*, 131 S. Ct. at 1881; *Knudon*, 534 U.S. at 210-11; *Mertens*, 508 U.S. at 257.

What are the rights of a plan administrator in reference to a third-party damage claim by a plan beneficiary in a personal injury case?

> *The plan administrator only has "equitable rights" to enforce the terms of the health care plan (i.e., any reimbursement or subrogation provisions under the plan), and thus its right to recover for medical expenses it has paid is limited. The plan cannot bring an action seeking to impose personal liability on a plan participant/beneficiary.* ***Additionally, the plan does not have any right of recovery against the tortfeasor or his insurer.***

An avoidable health-care expense often arises in personal injury situations. Many times, the health plan pays for the medical coverage, and the plan participant also recovers medical costs from the tortfeasor. This results in a double recovery for the injured plan participant. With this in mind, health plans often contain reimbursement or subrogation provisions or agreements. Where the third-party payer is an employer-provided health-care plan, any reimbursement or subrogation action is covered by ERISA. *See* 29 U.S.C. § 1144(a) (ERISA preemption of state laws relating to any employee benefit plan).

Recent Supreme Court decisions have severely limited plan reimbursement and subrogation rights. *E.g., Knudson*, 534 U.S. at 207. The Court has drawn a sharp distinction between legal remedies and equitable remedies, with only the latter being available to plan fiduciaries under § 502(a)(3). *Id.* at 218; *see also id.* at 221 (observing that, in comparison, § 502(a)(1)(B), which applies only to "a participant or beneficiary," authorizes "a civil action 'to enforce his rights under the terms of the plan,' without reference to whether the relief sought is legal or equitable"). Thus, to seek enforcement of its reimbursement or subrogation rights, the plan may only ask for an equitable remedy. *Id.* at 221. The plan cannot seek, under § 502(a)(3), to impose personal contractual liability on a plan participant, as such relief was not typically available in equity.

Regarding this distinction between legal and equitable remedies, the Supreme Court in ***Great-West Life & Annuity Ins. Co. v. Knudson*** offered the following explanation in relation to the right to restitution (which may be legal or equitable in a particular case depending on the nature of the relief sought):

> In cases in which the plaintiff (P) "could not assert title or right to possession of particular property, but in which nevertheless he might be able to show just grounds for recovering money to pay for some benefit the defendant (M) had received from him," the plaintiff (P) had a right to ***restitution at law***. . . In such cases, the plaintiff's (P) claim was considered legal because he sought "to obtain a judgment imposing a merely personal liability upon the defendant (M) to pay a sum of money." Such claims were viewed essentially as actions at law for breach of contract (whether the contract was actual or implied).

> In contrast, a plaintiff (P) could seek ***restitution in equity***, ***ordinarily in the form of a constructive trust or an equitable lien, where money or property identified as belonging in good conscience to the plaintiff (P) could clearly be traced to particular funds or property in the defendant's (M) possession***. A court of equity could then order a defendant (M) to transfer title (in the case of the constructive trust) or to give a security interest (in the case of the equitable lien) to a plaintiff (P) who was, in the eyes of equity, the true owner. But where "the property [sought to be recovered] or its proceeds have been dissipated so that no product remains, [the plaintiff's] claim is only that of a general creditor," and the plaintiff (P) "cannot enforce a constructive trust of or an equitable lien upon other property of the [defendant](M)." Thus, for restitution to lie in equity, the action generally must seek not to impose personal liability on the defendant (M), but to restore to the plaintiff (P) particular funds or property in the defendant's (M)possession.

435 U.S. at 213-14 (emphasis added; internal citations omitted). Thus, for restitution to lie in equity, the action generally must seek not to impose personal liability on the defendant (M), but to restore to the plaintiff (P) particular funds or property in the defendant's (M) possession. A plan fiduciary may not sue for a sum of money merely representing the money owed to the plan under its terms, i.e., legal damages.

There are two divergent lines of authority that have developed post-*Knudson* defining what remedies were "typically available in equity" and are therefore available under § 502(a)(3). In the majority of courts, plan fiduciaries may sue for an identifiable sum of money within the possession and control of the beneficiary. The identifiable sum must also belong in good conscience to the plan, i.e., the plan must contain a reimbursement and/or subrogation provision. *See Bombardier Aerospace Employee Welfare Benefit Plan v. Ferrer, Poirot and Wansbrough*, 354 F.3d 348 (5th Cir. 2003) (setting forth "relevant three-part inquiry: Does the Plan seek to recover funds (1) that are specifically identifiable, (2) that belong in good conscience to the Plan, and (3) that are within the possession and control of the defendant beneficiary?").

Post-*Knudson,* the Fifth Circuit has found important the fact that disputed funds in *Knudson* were outside the possession or control of the beneficiary. *See Knudson*, 534 U.S. at 214 (noting that the funds to which the plan claimed entitlement were not in the participant's possession but instead were placed in a special needs trust). For instance, in *Bauhaus USA, Inc. v. Copeland*, 292 F.3d 439 (5th Cir. 2001), the court held that fiduciaries of health plan had no available remedies under ERISA to obtain a declaratory judgment that the plan was entitled to recover, under the plan's subrogation clause, from a plan participant's settlement. There, the court reasoned, the defendant (M), like the *Knudson* participants, were not in possession of the disputed funds, as the settlement proceeds had been placed in the state court registry. Apparently recognizing the absurd consequences that could result from such a strict interpretation of *Knudson*, the Fifth Circuit recently overruled *Bauhaus* "to the extent it is irreconcilable with [the] requirement that the funds only need to be in the defendant's (M) possession." *ACS Recovery Servs., Inc. v. Griffin*, 723 F.3d 518, 529 n.11 (5th Cir.), *cert. denied*, 134 S. Ct. 618 (2013); *see id*. at 528-29 (observing that, unlike in *Knudson*, the special needs trust created for Griffin's benefit was a named defendant); *see also Bombardier*, 354 F.3d at 356-58 (holding that action against, inter alia, participant and his personal injury attorneys was equitable in nature, where the funds the plan sought to recover were held in law firm's trust account and thus the participant had ultimate control over the funds).

The Supreme Court revisited the circumstances under which an ERISA plan fiduciary may seek reimbursement in ***Sereboff v. Mid Atlantic Medical Services, Inc***., 547 U.S. 356 (2006). In *Sereboff*, the fiduciary of an ERISA health plan asserted a lien on the anticipated proceeds its participants would recover from a lawsuit. After the participants settled their tort action and placed the proceeds in a separate investment account, the plan sued for equitable relief. The Supreme Court held that a fiduciary may only seek equitable relief under § 502(a)(3) when it seeks reimbursement of funds paid to the claimant through an equitable lien or constructive trust over specifically identified funds that are in the claimant's possession. Thus, whereas in *Knudson*, an equitable claim under ERISA could not be maintained because no identifiable fund existed in the claimant's possession, the same was not true in *Sereboff*. Rather, claims for equitable lien or constructive trust could be maintained under § 502(a)(3) because of the existence of "specifically identifiable" funds that were within the possession and control of the Sereboffs," i.e., the portion of the tort settlement that had been preserved in the separate investment accounts.

The Court stated that the plan's "Acts of Third Parties" provision qualified as an "equitable remedy" because it specifically identified a particular fund distinct from the Sereboffs' general assets—"[a]ll recoveries from a third party (whether by lawsuit, settlement, or otherwise)"—and a particular share of that fund to which the plan was entitled—"that portion of the total recovery which is due [the plan] for benefits paid." As such, the plan was able to rely on a "familiar rul[e] of equity" to recover the medical expenses it had paid by following a portion of the recovery into the hands of the Sereboffs as soon as the settlement fund was identified and by imposing on that portion a constructive trust or equitable lien. The Court noted that the "strict tracing rules" that may have accompanied an action for equitable restitution at common law do not apply to equitable liens imposed by agreement or assignment.

The Court reiterated, however, that a fiduciary cannot seek to impose general personal liability on a plan participant when asserting a reimbursement claim, as that would be a legal instead of an equitable remedy. Further, nothing in *Sereboff* overruled the Court's prior holding in *Knudson* that "where 'the property [sought to be recovered] or its proceeds have been dissipated so that no product remains, [the plaintiff's] (P) claim is only that of a general creditor,' and the plaintiff (P) 'cannot enforce a constructive trust of or an equitable lien upon other property of the [defendant] (M).'"

In 2013, the Supreme Court relied on its earlier cases in support of the power of ERISA plan documents and issued its decision in ***US Airways, Inc. v. McCutchen***, 133 S. Ct. 1537 (2013). There, a plan administrator had filed suit against the participant for "appropriate equitable relief," seeking reimbursement of the entire amount it had paid the participant for his medical expenses. The participant raised two defenses to the plan's request for an equitable lien on the amount it had paid: that, absent over-recovery on his part, the plan's right to reimbursement did not kick in; and that the plan had to contribute its fair share to the legal costs (40% contingency fee) he incurred to get his recovery. *The Supreme Court held that in a § 502(a)(3) action based on an equitable lien by agreement,*[1] *the ERISA plan's terms govern*, and neither general unjust enrichment principles nor specific doctrines reflecting those principles—such as

[1] Citing *Sereboff*, 547 U.S. at 364-65, the Supreme Court described the "[fiduciary's] claim for reimbursement [as] the modern-day equivalent of an action in equity to enforce such a contract-based lien—called an 'equitable lien by agreement.'" *McCutchen*, 133 S. Ct. at 1545.

the double recovery or common-fund rules invoked by the participant—can override the clear provisions of the applicable contract.

The Supreme Court held that the parties should be held to the mutual promises they made in the terms of the ERISA plan and declined to apply equitable rules which were contrary to the parties' expressed commitments, explaining that such was not contrary in the historic practice of equity courts. The Court noted that § 502(a)(3) does not authorize "appropriate equitable relief" at large, but rather countenances only such relief as will enforce the terms of the plan or the ERISA statute itself.

As indicated above, a second issue in the case related to the burden of compensating the participant's attorney where the underlying lawsuit generated the funds from which the plan claimed recovery. Although the Supreme Court found that equitable rules cannot trump a reimbursement provision, the Court indicated that they may aid in properly construing the provision. Here, the plan was silent on the allocation of attorney's fees; the Court thus allowed the equitable, common-fund doctrine to fill the contractual gap with respect to the apportionment of attorneys' fees stemming from the participant's third-party settlement. (The Court remanded the matter to the district court to determine how much the plan's reimbursement should be reduced for attorney's fees.) **LESSON: Read the plan, not just the plan summary.**

Thus, where the terms of the plan specifically dictate a particular result such as reimbursement of benefits, the plan terms will override arguments to the contrary based on equitable principles. On the other hand, with respect to related issues where the plan is silent, such as the attorneys' fees in this case, the

Court ruled that equitable principles can inform the intent of the partie*s* (i.e., "fill the gap") because the issue was not squarely addressed by the plan.

Shortly after *McCutchen*, the Fifth Circuit issued its en banc ruling in ***ACS Recovery Services, Inc. v. Griffin***, 723 F.3d 518 (5th Cir.) (en banc), *cert. denied*, 134 S. Ct. 618 (2013). The facts underlying the claim can be summarized as these. In 2006, Larry Griffin was seriously injured in a car accident; his employer's health plan paid about $50,000 in medical benefits. Griffin and his then-wife sued the third-party tortfeasor and his insurer, ultimately settling for almost $300,000. The plan provided that it "will have a first lien upon any recovery" obtained in a third-party action to repay medical expenses, and it required that a participant not to take action that might prejudice the plan's right to reimbursement. The plan had notified Griffin's attorney of these provisions shortly after suit was filed against the third party. Nevertheless, under the terms of the settlement agreement, which Griffin signed, some of the settlement proceeds were segregated for attorneys' fees and other expenses, and the balance was used by the third-party's insurer to purchase an annuity contract, pursuant to which monthly payments would be paid into a special needs trust for Griffin's benefit.

The plan sued Griffin, his ex-wife, the special needs trust, and its trustee. The plan sought a constructive trust on the amounts paid by the plan to Griffin for his medical expenses and requested that the defendants (M) be enjoined from interfering with the plan's right of reimbursement. The district court ruled in favor of the defendants (M) and a panel of the Fifth Circuit affirmed, holding that the relief sought was legal, not equitable, as none of the defendants (M) ever had possession of any settlement proceeds or was otherwise amenable to suit by the plan.

Sitting en banc, the Fifth Circuit reversed the panel's decision, finding it did not comply with Supreme Court precedent. The court held that Griffin had a pre-existing agreement with the plan to reimburse the plan for payments on his behalf in the event of a third-party recovery and that his signature on the settlement agreement triggered an equitable lien by agreement for the benefit of the plan that was superior to Griffin's own right to the funds. The court also pointed out that in order to assent to the disposition of the funds as outlined in the settlement agreement, Griffin must have had at least constructive possession and control of the funds. Moreover, the court held that the annuity and the monthly payments to the trust were an identifiable fund to which the plan's lien attached and that under ERISA, appropriate equitable relief demanded the imposition of a constructive trust on the proceeds of the annuity as they accrued to the trust. According to the court, "a holding that no equitable lien by agreement arose would blink reality and elevate form over substance."

The Fifth Circuit also rejected the argument that special needs trusts are too "special" to allow to be sued by an ERISA plan. Further, the court declined to decide whether the plan could state an equitable claim against Griffin to recover benefits paid to him by the special needs trust, after explaining that "the facts in *Knudson* so closely parallel those of the instant case as to render a different outcome, even an outcome predicated on *Sereboff*, arguable." The court held that a decision was unnecessary "because imposing a constructive trust on his Trust affects exactly the same proceeds and effects the same results as would an equitable remedy against [Griffin]."

The ERISA health benefits plan does not have a right of subrogation or a right, on its own or otherwise, to pursue a claim against the third-party defendant.

ERISA is silent on the matter of subrogation of benefits and liens in the context of personal injury cases. Thus, federal common law governs the enforcement of a health-care plan's subrogation rights. Further, as indicated above, the only lien that has been recognized is the "equitable lien by agreement" which is based on the plan's language (thus giving the plan a right to the funds) and which attaches to identifiable funds in the possession or control of a defendant.

Whatever rights a plan has to recovery are governed by the plan's written terms (e.g., a subrogation or reimbursement provision) and any other ERISA statutory constraints. Any subrogation provisions which obligate plan participants do not create any obligation on a third-party insurer. *See Trustees of Central States, Southeast & Southwest Area Health & Welfare Fund v. State Farm Mut. Auto. Ins. Co.*, 17 F.3d 1081 (7th Cir. 1994).

NOTE ***the difference in Louisiana between the rights of a self-funded plan and an insurance plan.***
ERISA does not preempt state law when policy language is at issue.

As background, there is a distinction between (1) fully-insured health plans subject to state insurance laws and regulations, and (2) self-insured, or self-funded, health plans not subject to state insurance laws and regulations through ERISA preemption, 29 U.S.C. § 1144. With this in mind, in some cases, state regulatory authorities may become a factor in a reimbursement dispute. Indeed, such may be the case for a health plan in Louisiana.

In *Benefit Recovery, Inc. v. Donelon*, 521 F.3d 326 (5th Cir. 2008), the Fifth Circuit ruled that ERISA does not preempt Directive 175 of the Louisiana Commissioner of Insurance requiring insurers to recognize the "make-whole" and "common fund" doctrines when asserting subrogation rights. More specifically, Directive 175, which the court deemed to be a "state law," provides that "any right of recovery from third parties on the part of the insurer, whether by subrogation or reimbursement, is subordinate to the insured's right to be fully compensated for his damages; and . . . the insurer is obligated to share in the legal expenses incurred."

The Fifth Circuit analyzed whether the directive satisfies the two prongs of the savings clause analysis set forth in *Kentucky Association of Health Plans v. Miller*, 538 U.S. 329 (2003). The first element of that test is whether the state law is directed toward entities engaged in insurance. This was easily satisfied because the directive "specifically requires insurance companies to include certain terms in their contracts." The second element of the test is that the state law must "substantially affect the risk pooling arrangements of insurer and insured." The Fifth Circuit found that "the Directive certainly alters the permissible bargains between insurers and insureds by telling them what bargains are acceptable." Thus, the court ruled that the directive affected risk pooling, and as a result, insurers in Louisiana are obligated to include language in their policies that complies with the directive.

According to the stipulated facts in *Benefit Recovery*, ***Directive 175 applies only to insurance policies, not self-funded ERISA benefit plans*** or entities acting as "pure administrators" of such plans.

What are the ERISA health plans' equitable rights to get its money back?

Importance of plan language

The civil action authorized under § 502(a)(3) is one that seeks, inter alia, to enforce the terms of the plan or to redress a violation thereof. Consequently, the plan must contain an express reimbursement and/or subrogation provision. Such provisions are the source for the resulting "equitable lien by agreement" that a plan may pursue through a § 502(a)(3) action. Moreover, without an express reimbursement or subrogation provision, a plan cannot come in and claim reimbursement based on, for example, unjust enrichment: If the plan is silent in this regard, the plan cannot argue that it had a reasonable expectation of repayment.

It also is important for a plan to have both subrogation and reimbursement provisions in the plan. At least one court has limited subrogation to only the benefits that had been paid at the time the participant agreed to the terms of the settlement; the plan did not have a reimbursement provision. *See Shell v. Amalgamated Cotton Garment,* 43 F.3d 364 (8th Cir. 1994).

Finally, as seen in *Sereboff,* the provision should specifically identify (1) "a particular fund distinct from the [participant's] general assets," e.g., "all recoveries from a third party (whether by lawsuit, settlement, or otherwise)," and (2) "a particular share of that fund to which the plan was entitled," e.g., "that portion of the total recovery which is due [the plan] for benefits paid."

What options does a plan have to achieve reimbursement or subrogation?

(1) *Intervention in state-court tort action.* In *Knudson*, 534 U.S. at 220, the Supreme Court noted that there may have been other means for the petitioners to obtain the essentially legal relief they sought; the court "express[ed] no opinion as to whether petitioners could have intervened in the state-court tort action brought by [the Knudsons]."

(2) *Include in the plan an alternative dispute resolution provision covering the reimbursement provision*. *See, e.g.*, *Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc*., 7 F.3d 1110 (3rd Cir. 1993) (upholding arbitration agreement under the Federal Arbitration Act in relation to claim of statutory violation under ERISA).

(3) *Assert a state-law breach of contract claim*. As with the potential for intervention, the Supreme Court in *Knudson* "express[ed] no opinion as to . . . whether a direct action by petitioners against respondents asserting state-law claims such as breach of contract would have been pre-empted by ERISA." Notwithstanding, it is likely that a majority of courts would conclude that a state-law breach of contract cause of action is preempted by ERISA. *But see, e.g., Yerby v. United Healthcare Ins. Co*., 2002 WL 595122 (Miss. Apr. 18, 2002) (allowing employee health care plan to seek reimbursement).

(4) ***FILE § 502(a)(3) ACTION FOR "APPROPRIATE EQUITABLE RELIEF" UNDER KNUDSON AND OTHER PRECEDENT.***

(A) **Wrong way to seek recovery**.

- Assert a purely legal claim for repayment of monies owed (i.e., compensatory damages).

- State a claim for specific performance of the plan's (contract's) provisions.

(B) **<u>Right way to seek recovery</u>**.

- Name all defendants who may be in actual or constructive possession and control of the funds (*e.g.*, plan participants/beneficiaries, personal injury lawyers, trust, trustee).

- Assert that relief is sought pursuant to a constructive trust or "equitable lien by agreement" on the amount paid for medical expenses.

<u>Other Pertinent Caselaw</u>

Avmed Inc. v. BrownGreer PLC, 300 F. App'x 261 (5th Cir. 2008).

<u>Held</u>: In early stages of lump-sum private settlement of multidistrict litigation (MDL), providers failed to demonstrate a fund potentially susceptible to ERISA liens.

In products liability MDL involving Vioxx, a group of self-funded ERISA health benefit providers brought an action pursuant to § 502(a)(3), seeking to enjoin the distribution of interim payments from settlement of MDL until such time as the providers were able to assert equitable reimbursement rights against those claimants for whom they paid medical expenses related to Vioxx. The district court denied injunctive relief. The Fifth Circuit affirmed, holding that the providers had failed to demonstrate "an identifiable fund potentially susceptible to [ERISA] liens [that was] currently within the possession and legal control of the [] plan beneficiaries or their agents." *Id.* at 265.

First, in finding that there was no "identifiable fund," the Fifth Circuit reasoned that the pre-funded settlement program was in its early stages, and the claims administrator has not finished determining which claimants were eligible for funds or determining the amount of recovery. The court further noted that none of the health plans at issue designated an unallocated settlement fund like the one in the Vioxx settlement as an "identifiable" fund from which the plan may collect. Second, the court was unable to determine whether any portion of the funds at issue might belong in good conscience to the health providers, citing the uncertainties inherent in the plans' request. Similarly, it was beyond dispute that the settlement funds of Vioxx-injured claimants who had not received benefits from the plaintiff health plans would never belong to the plans. Finally, citing *Knudson*, the court found that the funds in the Vioxx lump, unallocated settlement fund were not currently within the possession or legal control of the plan beneficiaries against whom the plans sought restitution.

***Cooperative Benefit Administrators, Inc. v. Ogden*,** 367 F.3d 323 (5th Cir. 2004).

Held: Administrator of employer long-term disability plan seeking reimbursement for overpayment of benefits under "Benefit Offset" provision did not have federal common law right to sue participant for legal relief on theory of unjust enrichment or restitution.

Here, the administrator (a fiduciary under ERISA) sought relief pursuant to § 502(a)(3), as well as the federal common law of unjust enrichment as applied to ERISA. During the proceedings, the administrator conceded that it had failed to state a viable claim for equitable relief under § 502(a)(3), after which the district court dismissed that claim. The district court later recognized a federal common law right of unjust enrichment on the administrator's behalf and accordingly denied Ogden's motion to dismiss and granted the administrator's motion for summary judgment on the merits.

On appeal, the Fifth Circuit held that the ERISA plan fiduciaries do not have a federal common law right to sue a beneficiary for legal, as distinct from equitable, relief on a theory of unjust enrichment or restitution. In considering whether the plan could recover on its federal common law claim of unjust enrichment, the *Ogden* court explained "that federal common law may be applied to fill 'minor gaps' in ERISA's text, as long as the federal common law rule created is 'compatible with ERISA's policies.'" The court noted, however, that "federal courts do not have authority under ERISA to create federal common law when that statute 'specifically and clearly addresses the issue before the court." As to the plan's attempt to recover on its unjust enrichment claim, the court held:

> Congress, in drafting § 502(a)(3)(B) to allow only "equitable relief," specifically contemplated the possibility of extending to plan fiduciaries a right to sue a participant for money damages and chose instead to limit fiduciaries' remedies to those typically available in equity. As ERISA's text "specifically and clearly addresses" the issue whether . . . a plan fiduciary . . . has a right to pursue a claim for legal relief against [its beneficiary], there is no "gap" in ERISA on this question and thus no basis for granting [the fiduciary] a federal common law remedy.

Id. at 332. Accordingly, the Fifth Circuit stated, the district court erred in not dismissing the administrator's unjust enrichment claim for failure to state a claim.