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## U.S. Supreme Court Decision in McCutchen Employment Case Leaves 11th Circuit Precedent Unscathed

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In its decision published yesterday in [\*U.S. Airways, Inc. v. McCutchen\*, 2013 U.S. LEXIS 3156 \(April 16, 2013\)](#), the United States Supreme Court said what the Eleventh Circuit has been saying all along: Recovery through (and defenses to) **Employee Retirement Income Security Act (ERISA)** Sec. 502(a)(3) are limited to enforcement of the terms of the plan, and cannot be crafted in contradiction of clear plan terms. In so holding, the Supreme Court reversed the Third Circuit, whose holding was recently lambasted by a District Court in the 11<sup>th</sup> Circuit in [\*Schwade v. Total Plastics, Inc.\*, 2012 U.S. Dist Lexis 37091 \(M.D. Fla. 2012\)](#) (See April 5, 2012 blog for a more detailed discussion.) The Supreme Court cited [\*Zurich American Ins. Co. v. O'Hara\*, 604 F. 3d 1232 \(11th Cir. 2010\)](#) as authority with which it was siding (See Footnote 2.)

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