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What CIGNA v. Amara Means for You

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In a move that might open the door to more lawsuits, the U.S. Supreme Court decided on May 16 in *CIGNA Corp. et al. v. Amara et al.* (No. 09-804) that a summary plan description (SPD) is not the plan document and therefore not legally binding. The Supreme Court held that ERISA Section 502(a)(1)(B) did not give the U.S. District Court for the District of Connecticut the authority to change the plan's terms because of a deficient SPD but found ERISA Section 502(a)(3) authorizes equitable relief. The High Court sent the case back to the 2nd U.S. Circuit Court of Appeals to address equitable remedies. (See ¶231, ¶522, ¶821 and ¶822 of the *Handbook* for more on SPDs.)

Are there any real winners in this outcome? Plan sponsors will be pleased with the holding that the terms of the plan document govern even if the SPD is deficient. Participants may be pleased that the Supreme Court seems to be opening the door to the possibility of monetary relief. It may be years before the lower courts decide the outcome regarding defining appropriate equitable relief and its requirements.

This column provides a summary of the case and highlights some key issues the courts raised.

Case Summary

In 1998, CIGNA converted its final average pay defined benefit plan to a cash balance plan. Under the pre-1998 plan, participants with certain age and service requirements were eligible for a subsidized early retirement benefit. Communications to participants began in late 1997. A class action lawsuit was filed challenging the new plan.

The district court found that CIGNA's disclosures violated ERISA requirements and that the deficiencies caused employees "likely harm." (See Box 1 for a list

of the district court's holdings.) The district court then reformed the plan citing ERISA Section 502(a)(1)(B) and ordered CIGNA to pay benefits according to the reformed plan. The 2nd Circuit affirmed the finding.

In its decision, the Supreme Court held that ERISA Section 502(a)(1)(B) did not give the district court the authority to reform the plan but that relief is available under ERISA Section 502(a)(3). The Supreme Court held that ERISA Section 502(a)(1)(B) relates to enforcing participant rights under the plan terms and that the SPD was not the plan, but rather a description of it.

Observations

There have been a number of cases in which circuit courts found in favor of the plaintiff because the plaintiff relied on erroneous information in the SPD. In rejecting reliance on an erroneous SPD, the Supreme Court also put aside the Department of Labor's position, presented in an amicus brief, that the terms of the SPD were the terms of the plan.

Regarding equitable relief, the Supreme Court said in its view, Section 502(a)(3) relating to equitable relief referred to "those categories of relief" that, before the merger of law and equity, "were typically available in equity." Further, this type of case brought by a beneficiary against a plan fiduciary regarding the terms of the plan is the kind of lawsuit that would have been brought only in an equity court where the remedies would have been equitable remedies. Interestingly, the Supreme Court indicated that the district court's injunctions fell within these equitable remedies. The holding stated that "the relevant standard of harm will depend upon the equitable theory by which the district court provides relief." The Supreme Court remanded the case

See *CIGNA*, p. 2

back to the 2nd Circuit to address the issue of equitable relief.

While the Supreme Court judgment was unanimous among participating justices (one justice did not participate), two (Antonin Scalia and Clarence Thomas) issued a concurring opinion which indicated that the judgment should have stopped after deciding that no relief was available based on misrepresentation in the SPD; anything beyond that in the opinion is dicta (that is, authoritative but not binding).

District Court Findings

Following are highlights of the district court's holdings in this case.

Box 1

District Court's Holdings

Important decisions reached by the U.S. District Court for the District of Connecticut in first hearing this case include the following:

- Connecticut's six-year statute of limitations for written contracts governed actions, and claims were thus timely;
- named plaintiffs and thousands of others did not waive ERISA claims by signing written waivers of claims in order to receive severance benefits;
- the cash balance plan was not age discriminatory;
- the cash balance plan did not violate the "133 1/3 rule," the applicable test under ERISA's anti-backloading provisions;
- the cash balance plan did not work an impermissible forfeiture;
- employees' failure to name the plan administrator as defendant was not fatal to their claims regarding plan descriptions and disclosures, but they could only obtain injunctive or equitable relief;
- the employer did not provide a key notice to employees about effectuating conversion to the cash balance plan as ERISA required;
- the employer's SPD and other materials were inadequate under ERISA and, in some instances, downright misleading; and
- further briefing was required on issue of what remedies were required or appropriate. 🏠

Communication issues

The district court findings for the plaintiffs stated that the SPDs and other plan disclosure material were inadequate under ERISA and "downright misleading," as well as finding that the Section 204(h) notice was deficient. Here is a sampling of what employees were told regarding the new plan:

- "designed to work well for both longer- and shorter-service employees";
- "build(s) benefits faster" than the old plan;
- "one advantage that the company will not get from the retirement plan changes is cost savings";
- the new plan was not designed to save money;
- when compared to the current plan, the new plan "tends to provide larger benefits for shorter-service employees and comparable benefits for longer-service employees"; and
- "you will see the growth in your total retirement benefits from CIGNA every year."

Among the issues not mentioned:

- the impact of wear-away: CIGNA admitted that it did not inform employees that they might not be accruing benefits under the new plan because of wear-away;
- the loss of the early retirement subsidy if the participant elected a lump sum; and
- the company saved \$10 million by converting to a cash balance plan even though it expected to see a comparable increase in 401(k) plan costs due to design changes.

Focus groups were held with managers who suggested providing participants with illustrations to demonstrate the impact of the plan change. Employee responses to a questionnaire accompanying a retirement kit distributed in 1997 indicated the employer needed to provide participants with details of the plans as they pertained to the participant; for example, illustrations, projections, comparisons of the two plan formulae and more understandable information. Copies of internal e-mails revealed that CIGNA's general rule was not to provide before-and-after comparisons.

The district court held that the disclosures were not written in a manner to be understood by the average plan participant and failed to include important details

See **CIGNA**, p. 3

regarding the conversion that participants would want to know. The court believed that CIGNA was aware that a number of employees faced significant reduction in future benefit accruals and failed to inform them. The court found that CIGNA had a duty to inform participants of the possibility of wear-away.

Likely harm

CIGNA argued that even if the disclosures were defective, the plaintiffs weren't entitled to relief because they didn't demonstrate injury.

The district court cited 2nd Circuit cases in which "likely harm" was the standard for demonstrating injury because it is more consistent with ERISA's objective to protect employees. The district court held that the plaintiffs demonstrated "likely harm" because the information provided by CIGNA "likely, and quite reasonably, led participants to believe" that they wouldn't be affected by wear-away and that their combined benefits from the old and new plans would be comparable to the old.

The U.S. Supreme Court

Let's examine some of the issues the Supreme Court raised.

The summary plan description

The SPD is not the plan, but merely a description of the plan. The opinion said:

To make the language of a plan summary legally binding could well lead plan administrators to sacrifice simplicity and comprehensibility in order to describe plan terms in the language of lawyers.

The Supreme Court noted the role of the plan sponsor in designing and executing the plan is one of the plan settlor while the role of the plan administrator is to administer the plan according to its terms and distribute the SPD. ERISA clearly defined the roles and the court had no reason to believe that ERISA intended for the roles to be mixed by giving the plan administrator the authority to write plan terms in the SPD.

Observation: Most SPDs contain the caveat that the plan document governs in the case of a discrepancy between the SPD and the plan document. This holding will be a relief to plan sponsors dealing with inadvertent errors and omissions. In their concurring opinion, Justices Scalia and Thomas noted that they agreed with the

judgment, but that the opinion should have stopped at this point; that is, the district court did not have the authority to reform the plan under Section 502(a)(1)(B) for misrepresentations in the SPDs.

Since the SPD is not the plan and ERISA Section 502(a)(1)(B) provides that a civil action may be brought by a participant to enforce rights under the plan, the district court did not have the authority to reform the plan for misrepresentations in the SPD. Interestingly, the Supreme Court then asked, "If Section 502(a)(1)(B) does not authorize entry of the relief here at issue, what about nearby Section 502(a)(3)?" (See Box 2.)

Box 2

Civil Action Under ERISA

ERISA Section 502 concerns civil enforcement, with Section 502(a)(1)(B) providing that a civil action may be brought by a participant or beneficiary "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."

ERISA Section 502(a)(3) provides that a civil action may be brought "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 equitable relief (1) to redress such violations or (2) to enforce any provisions of this title or the terms of the plan." 

Observation: Many court cases have been decided in favor of the plaintiffs but lack of any type of equitable remedy, resulting in no monetary benefit to the plaintiffs. Will this case open the floodgate of lawsuits relating to monetary relief?

Equitable relief and likely harm

The opinion section of the holding indicates that "Section 502(a)(3) invokes the equitable powers of the district court." The discussion of equitable relief is very interesting and refers to remedies that "traditionally speaking (that is, before the merger of law and equity) were typically available in equity." The opinion notes that the case concerns a suit by a beneficiary against a plan fiduciary about the terms of the plan and such a case would have been brought only in a court of equity and not a court of law. The equity remedies noted include:

See *CIGNA*, p. 4

CIGNA (continued from p. 3)

- reformation of a contract;
- equitable estoppel; and
- surcharge — monetary compensation for trustee’s breach of duty.

The Supreme Court noted it doesn’t decide which remedies are appropriate and the relevant ERISA provisions do not provide any standard for determining harm. The standard of harm will depend on the equitable principles that the district court might apply. In addition, the Supreme Court indicated that “likely harm” wasn’t enough, “actual harm must be shown.”

In their concurring opinion, Justices Scalia and Thomas noted that discussing equitable relief is “purely dicta” and determining harm “is best left for a case in which the issue is raised and briefed.”

Impact on Plan Sponsors

As always, risk mitigation is a critical element in employee benefits.

This case illustrates that an employer and plan administrator should do the following:

- 1) Review your plan document and SPD to ensure that there are no conflicts. Wrap plan documents where the plan document and SPD are combined may not be impacted by this case.
- 2) Review your procedures for participant communications. Ask yourself:
 - What are your internal policies and procedures for communicating plan provisions to employees?
 - Are there multiple levels of reviews before a communication is released?
 - Do you have a procedure for identifying communications which require counsel review?

At this point, the case is being sent back to the lower court to address equitable relief; we will have to wait and see what happens next. 🏠



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