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U.S. Supreme Court Rules on Available ERISA Remedies for Misrepresentations About Benefit Plan Changes

By Margaret Clemens

On May 16, 2011, the U.S. Supreme Court issued an important decision in *CIGNA Corp. v. Amara*, holding: (a) that a summary plan description (SPD) is not a "plan" document under the Employee Retirement Income Security Act (ERISA); (b) that participants and beneficiaries may not sue under section 502(A)(1)(B) of ERISA to recover for a deficient SPD; and (c) that "appropriate equitable relief" under section 502(a)(3) of ERISA may be available to plan participants who are harmed by alleged misrepresentations made about upcoming changes to their pension plan benefits.

Although the Court remanded the case back to the district court to revisit its determination of an appropriate remedy for the notice violations of ERISA that it had previously identified, the majority opinion provided additional guidance to lower courts about the remedies available as "equitable relief" under ERISA. As a result, plan sponsors and administrators may wish to review their communications protocols to ensure that they would be viewed as having taken reasonable steps to provide accurate and complete information to plan participants and beneficiaries.

Background Facts

Before 1998, CIGNA provided its eligible employees with a traditional defined benefit retirement plan, with benefits based upon an employee's years of service and final average salary. The plan also allowed an employee to retire early, at age 55, and receive an actuarially subsidized pension. In 1997, CIGNA sent a letter announcing that it was going to put in place a new pension plan, substituting an "account balance plan," or "cash balance plan," in place of its traditional defined benefit plan. In that letter, CIGNA informed employees that the new plan would "significantly enhance" its "retirement program" and would produce an "overall improvement in . . . retirement benefits."

Among other things, CIGNA also told employees that their opening account balance would represent the "full value" of the benefit the employee had earned for service prior to 1998 and that the company would not realize any cost savings from the retirement changes. In fact, however, the new plan saved the company $10 million annually, and the initial deposit did not represent the full value of the benefit that the employees had earned for their service prior to 1998. Although the company had issued a summary plan description (SPD) for the new plan, the district court found that CIGNA's descriptions of the plan were "incomplete and inaccurate" and had not told employees about features of the new plan such as that it had shifted the risk of a fall in interest rates from CIGNA to its employees, and that some employees would have an extended period where they would earn no additional pension benefits. Perhaps more significantly, the district court found CIGNA "intentionally misled" its employees because some employees had asked for more details but CIGNA made a deliberate decision not to provide them.

As a result, the district court found that CIGNA had violated its disclosure obligations under §§ 204(h), 102(a) and 104(b) of ERISA. The district court then turned to the remedy. Even though the normal remedy for a violation of § 204(h) is to rescind the amendment, the district court refused to do so because there had been a prior amendment freezing benefits which had been properly disclosed, and the result of the rescission would be a retroactive plan freeze. The district court agreed that only employees who had been harmed by the failures could obtain relief, but it did not require individual members of the class to show individual injury, choosing instead to conclude that class members likely were harmed by CIGNA's actions. The district court then reformed the plan itself to permit employees to receive their benefits under the old plan for years prior to the amendment and the new plan's future accrual formula for years after the amendment, essentially eliminating the "wear away" period, and it ordered and enjoined CIGNA to reform its plan accordingly. The district court then held that § 502(a)(1)(B) authorized it to award this form of relief as a claim for benefits under the terms of the plan as reformed in accordance with the court's order. While the district court considered awarding the relief under § 502(a)(3), which authorizes a court to award "appropriate equitable relief," it did not do so because it had just ordered the relief under § 502(a)(1)(B) and because there were several Supreme Court decisions which had severely limited the forms of "equitable relief" that could be available under § 502(a)(3). Both parties appealed, and the Second Circuit summarily affirmed.

The Supreme Court's Opinion

The Supreme Court granted certiorari to resolve a conflict that had deeply divided the courts of appeals as to the correct legal standard to be applied to determine whether the employer's notice violations caused its employees sufficient harm to warrant legal relief under ERISA. Despite having granted certiorari to address that specific issue, the Supreme Court unexpectedly decided to consider first the issue as to whether the type of relief awarded by the district court was authorized under ERISA § 502(a)(1)(B).

The Court held that the relief awarded was not the type of relief available under § 502(a)(1)(B). As reasoned by the Supreme Court, § 502(a)(1)(B) grants the court the power to *enforce* the terms of a benefit plan, but not to change or rewrite those terms. Nor did the Court accept the alternative proposal of the United States Solicitor General, who had urged the Court to enforce the plan's terms as written, on the theory that the plan includes the disclosures that constitute the SPD. The Court rejected outright the notion that the SPD is itself a part of the plan. In doing so, the Court distinguished between an employer's role as a plan sponsor, which includes creating the basic terms and conditions of the plan and executing a written instrument containing those terms, and the role of the plan administrator (even where the plan administrator is the employer), whose role it is to provide plan participants with an SPD that accurately describes the terms of the plan. The Court refused to allow errors by a plan administrator to control the settlor/plan design decisions of the employer.

Justices Scalia and Thomas would have stopped there. The remaining six Justices (Justice Sotomayor did not participate in the case) went on to provide guidance to the district court on how to handle the case on remand. While ruling that § 502(a)(1)(B) did not authorize the district court to provide for the relief ordered, the majority opinion declared that § 502(a)(3) could authorize forms of relief similar to those entered by the district court. The majority opinion explained that the relevant legal standard to be applied in determining whether the plan participants had sustained sufficient harm to warrant relief depended on the equitable theory under which the district court provided the relief.

The majority stated that because courts of equity could reform a trust document to correct fraud or mutual mistake, could surcharge a fiduciary for certain breaches, and could award benefits on the basis of equitable estoppel, the district court could explore all three of these approaches in order to fashion an appropriate form of relief. To emphasize its point, the Court stated that "Indeed, a maxim of equity states that '[e]quity suffers not a right to be without a remedy.' R. Francis, Maxims of Equity 29 (1st Am. ed. 1823)."

Additionally, the majority also addressed the issue on which the Court originally granted certiorari – whether the district court had properly held that a showing of likely harm was sufficient to afford class-wide relief without an individual showing of detrimental reliance. The Court affirmed that detrimental reliance is required when the remedy provided is in the form of equitable estoppel. A surcharge or reformation, however, might not require detrimental reliance, but only "actual harm." Justice Scalia, joined by Justice Thomas, saw no need to address any of these issues, dismissed this portion of the majority opinion as no more than *dicta*, and would likely have found the descriptions of available equitable relief to have been well beyond the remedies that he would have found acceptable.

Practical Considerations

The opinion presents both pros and cons for employers. It is helpful for employers that the Court specifically held that an SPD is not a part of a benefit plan itself and that courts are not authorized under § 502(a)(1)(B) to rewrite the terms of a plan as a means of providing benefits to plan participants not otherwise entitled to them. It is also helpful that the Court has now clarified that a plan participant seeking to rely on an equitable estoppel theory needs to show detrimental reliance to obtain a remedy. Unfortunately, the Court's opinion provides district courts with more flexibility than previously recognized by the Court when fashioning relief for perceived injustices arising from errors in communication.

As a result, the following guidelines should be considered when administering plans:

- Take special care not to "sugar-coat" the negative features of benefit changes. Be candid about any negative effects that upcoming changes will have on benefits and be sure to answer questions posed by plan participants as fully and accurately as is feasible. Avoiding giving plan participants bad news is clearly *not* the best option.
- Identify to the individual or department who will address questions posed by plan participants to avoid inaccurate information being provided in response to questions and train the individual or department on the importance of answering the questions with candor.
- Conduct periodic audits and/or reviews of the accuracy of plan communications and benefit estimates – including the clarity of the language – provided by third-party administrators, in order to be able to demonstrate care and prudence in their communications efforts. These reviews may assist the employers and plan administrators in claims for equitable estoppel or surcharge/reformation.

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