Supreme Court Creates Confusion Concerning Availability of Equitable Relief Under ERISA Where An Employer Provides Inadequate and Misleading Information About a Plan's Terms

By Carl Cannon on June 17, 2011

Last month, in *Cigna Corporation v. Amara*, 131 S. Ct. 1866 (2011), the United States Supreme Court held that a company will not have to abide by a summary plan description that conflicts with the terms of the plan it describes under Section 502(a)(1)(B) of ERISA, a provision that authorizes suits to enforce rights or recover benefits under the terms of a plan. In *Amara* the company had changed from a basic defined benefit retirement plan to an account balance plan. In the process, the company provided employees information (some of which was in the form of a summary plan description) that the district court found to be incomplete and misleading, in violation of the plan administrator's disclosure obligations under ERISA. To remedy the situation, the district court in essence ordered the company to provide retirement benefits consistent with what the incomplete and misleading disclosures implied the benefits would be. The district court concluded that Section 502(a)(1)(B) authorized it to grant this relief and did not decide whether any other provision of ERISA could provide relief. The Second Circuit affirmed.

The Supreme Court's holding that Section 502(a)(1)(B) does not authorize the relief the district court had granted provided sufficient basis, without more, to vacate the decisions of the courts below and remand the case for a determination as to whether any other provision of ERISA could allow for relief. Indeed, Justice Scalia (joined by Justice Thomas) correctly said so in an opinion concurring only in the judgment vacating the lower court decisions.

Writing for a majority of the Court, however, Justice Breyer went beyond the holding described above to speculate what equitable remedies might be appropriate under Section 502(a)(3) of ERISA, a catch-all provision that authorizes "other appropriate equitable relief." While Justice Breyer's legal

analysis is quite complex, he strongly implies that the relief that the district court granted, though unavailable under Section 502(a)(1)(B) of ERISA, could be appropriate as "equitable relief" instead under Section 502(a)(3). As Justice Scalia correctly pointed out in his concurring opinion, this portion of the majority opinion is merely *dictum* (meaning unnecessary to the Court's actual holding) and therefore not binding legal precedent. Nevertheless, the majority's musings about the scope and availability of "appropriate equitable relief" are almost certain to cause confusion for years to come under which provision of ERISA to bring action.