Supreme Court Rules SPD Does Not Trump Plan Document, but Emphasizes Availability of Equitable Remedies Where Employer Misleads

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The Supreme Court of the United States in the *CIGNA* decision confirms, in what may be hailed as a victory for plan sponsors, that information contained in a summary plan description does not itself constitute the "terms" of a benefit plan for purposes of filing claims for benefits. However, the majority's assertion that participants have a vast arsenal of equitable relief under ERISA section 502(a)(3) will likely invigorate both participants and plaintiffs' attorneys. Because the surcharge remedy is one of the few equitable remedies that provide monetary relief, a likely increase in claims alleging notice violations and seeking a surcharge to plan participants is anticipated.

On May 16, 2011, the Supreme Court of the United States issued a highly anticipated decision in *CIGNA Corporation v. Amara*, in which it vacated a district court order requiring CIGNA to reform its cash balance plan and pay increased benefits based on a claim under Section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 (ERISA). In a unanimous opinion, the Supreme Court held that 502(a)(1)(B), which permits a participant to "recover benefits due to him under the terms of his plan," does not authorize a court to modify plan terms on the grounds that those terms were misrepresented in the plan's summary plan description (SPD). The Supreme Court also signaled, however, that Section 502(a)(3) of ERISA, which authorizes a participant "to obtain other appropriate equitable relief," might permit the district court's reformation of the plan, and it remanded the case back to the district court to decide that issue.

Background

In 1998, CIGNA replaced its traditional defined benefit plan with a cash balance plan that provided a lump sum based on annual pay credits and interest credits. CIGNA assured employees that the new formula entitled them to the greater of their traditional defined benefit at the time the old formula was frozen *or* their cash balance benefit under the new formula—a so-called "greater of A and B" benefit. CIGNA failed to explain, however, the "wear-away" resulting from the cash balance conversion, *i.e.*, that many participants would not experience any increase in their retirement benefit for an extended period of time, and that CIGNA's cost of maintaining the plan would be reduced.

A group of participants filed a class action lawsuit challenging the cash balance conversion. The district court agreed with their argument that CIGNA had violated its ERISA obligation to notify employees of any plan changes that would reduce their future benefits and to provide employees with easily understandable SPDs that accurately describe their rights under the plan. The district court ruled that CIGNA must replace the plan's "greater of A and B" provision with

an “A plus B” provision, which guaranteed employees a retirement benefit equal to whatever benefit they had earned under the old formula through the date of the amendment, plus whatever balance they had accrued in their individual accounts under the new formula. (Such an approach is required under the Pension Protection Act of 2006 for cash balance conversion amendments that are both adopted and take effect on or after June 29, 2005.)

Though the district court discussed the fiduciary breach provisions of Section 502(a)(3), it ultimately rested its decision on 502(a)(1)(B), which permits a participant to recover benefits “due to him under the terms of the plan.” Implicit in the district court’s reliance on 502(a)(1)(B) was the notion that an SPD can be legally enforceable where there are discrepancies between that SPD and its underlying plan document. The district court stated that it based its decision to rely on 502(a)(1)(B), rather than on 502(a)(3), in part on the fact that the Supreme Court had demonstrated in prior decisions what the district court perceived as an inclination to “curtail” the relief available under 502(a)(3).

Supreme Court’s Opinion

Court Holds That SPDs Do Not Constitute Plan Terms, Cannot Be Enforced Via 502(a)(1)(B)

Justice Breyer wrote on behalf of a unanimous Supreme Court in rejecting the district court’s reliance on 502(a)(1)(B) as legal authority for its reformation of the CIGNA plan. The Supreme Court emphasized that although 502(a)(1)(B) permits a court to *enforce* the terms of a plan, nothing in 502(a)(1)(B) permits a court to *change* the terms of a plan. The Supreme Court rejected the district court’s conclusion that an SPD can provide legally enforceable plan terms and the solicitor general’s argument that “the ‘plan’ includes the disclosures that constituted the summary plan descriptions.” Because the district court had based its reformation of the CIGNA plan on the idea that an SPD is a plan term that can be enforced via 502(a)(1)(B), an idea that the Supreme Court ruled was erroneous, the reformation of the plan could not stand.

But When Employer Misleads, 502(a)(3) Might Permit Plan Reformation

The majority did not stop there, however. It addressed head-on the district court’s claim that the Supreme Court was inclined to interpret 502(a)(3), which authorizes participants “to obtain other appropriate equitable relief,” narrowly and thereby limit the remedies available to participants under that section of the statute. The prior Supreme Court decisions that the district court interpreted as indicative of a narrowing of 502(a)(3) were actually not intended to narrow the scope of equitable relief available, but rather to ensure that any relief based on that provision was indeed equitable, not legal.

The basis of equitable relief is that it requires a party to restore fairness to a situation by taking a particular action—in this case, the district court required CIGNA to restore fairness to its plan participants by reforming the terms of its plan. Thus, according to the *CIGNA* majority, its action was precisely the type of relief that 502(a)(3) contemplates. The majority did not prescribe a particular equitable remedy for the district court to grant in its reconsideration of this case, but it described at least three equitable remedies that might be appropriate: reformation of contract, estoppel and monetary compensation against a trustee (known as a "surcharge").

Court Notes Correct Standard of Harm Will Depend on Remedy, Remands to District Court

The majority next considered the appropriate standard of harm that the plan participants would have to prove in order to receive equitable relief under 502(a)(3). The applicable standard would depend on which equitable remedy the district court imposed. At the very least, however, the majority emphasized that to receive equitable relief, a participant would have to prove that he or she was actually harmed by CIGNA's ERISA violations. Though the majority noted that certain equitable remedies would require the participants to also prove that they had detrimentally relied on CIGNA's misrepresentations, the Supreme Court made clear that this would not be necessary for all equitable remedies, such as surcharge. Thus, the majority concluded that it was for the district court to identify the precise standard of harm that the participants needed to prove, once it determined whether, and which, equitable remedy it would impose.

Concurring Opinions

Justice Scalia filed a concurring opinion, which Justice Thomas joined. Though Scalia agreed with the majority's holding that 502(a)(1)(B) did not authorize the district court's reformation of the CIGNA plan, he argued that the Supreme Court should have stopped there, prior to its detailed discussion of 502(a)(3) and the equitable remedies that might be available thereunder. Because the district court had expressly declined to analyze the claim's viability under 502(a)(3), Scalia asserted that it was legally meaningless for the majority to embark on any 502(a)(3) analysis. Scalia contended that this portion of the majority opinion is mere *dicta*, bears no precedential value and merely insinuates how the Supreme Court might rule were it to grant review of the district court's ultimate disposition of this claim on 502(a)(3) grounds.

Impact on Plan Fiduciaries and Employers

The Good News for Employers

The *CIGNA* decision confirms, in what may be hailed as a victory for plan sponsors, that information contained in an SPD does not itself constitute the "terms" of a benefit plan for purposes of filing claims for benefits. Prior to *CIGNA*,

some courts had held that SPDs were enforceable as plan terms, a position endorsed by the U.S. Department of Labor. Those holdings are now overruled. *CIGNA* establishes that employers may safely summarize their benefit plans in summary documents, so that participants can comprehend the contours of these benefit plans, without exposing themselves to 502(a)(1)(B) claims for benefits that the plans do not provide.

The Bad News for Employers

On the other hand, the majority's assertion that there is available to participants a vast arsenal of 502(a)(3) equitable relief will likely invigorate both participants and plaintiffs' attorneys. Because the surcharge remedy is one of the few equitable remedies that provide monetary relief, an increase is likely in claims alleging notice violations and seeking a surcharge to plan participants under 502(a)(3). Indeed, claims seeking not only a surcharge, but also equitable relief generally, are likely to increase in the wake of *CIGNA*. The legal and business imperative to ensure meticulous communication with plan participants regarding the benefits available to them under a plan's terms has become more compelling than ever in light of this decision.

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The McDermott Difference

McDermott's employee benefits and ERISA litigation lawyers can answer questions regarding the *CIGNA* decision, review the accuracy of summary plan descriptions and the effectiveness of notice protocols, and provide guidance on benefits communication strategies. For more information, please contact your regular McDermott Will & Emery lawyer, or:

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