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The Supreme Court's Decision in *CIGNA v. Amara*: Providing Assurance To Employers Sponsoring ERISA Plans

BY NANCY G. ROSS AND JOHN A. LITWINSKI

On May 16, 2011, the U.S. Supreme Court issued its much-anticipated decision in *CIGNA Corp. v. Amara*.[1] *CIGNA* reached three conclusions that have significant repercussions for benefit plan sponsors and benefit plan litigation.

[1] No. 09-804, 50 EBC 2569 (2011) (95 PBD, 5/17/11).

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First, the Supreme Court held that plan summaries do not constitute plan terms, and as such, an ERISA 502(a)(1)(B)claim for benefits cannot be the basis for a court to rewrite plan terms and order relief based upon erroneous language in a summary plan description.

Second, the Supreme Court held that ERISA Section 502(a)(3) on equitable remedies may provide a remedy for mistakes in SPDs, but only when plaintiffs can show actual harm by a preponderance of the evidence.

Third, the Supreme Court rejected a presumption of ''likely harm'' as a basis to recover for mistakes made in SPDs.

This article will address the Supreme Court's ruling in *CIGNA* and discuss its significance for employers sponsoring ERISA plans. As set forth below, *CIGNA* is largely, although by no means entirely, favorable to employers.

Background

In *CIGNA*, the company had long provided a traditional defined benefit pension plan for employees. Benefits under that plan were based on salary and years of service. In late 1997, the company announced the creation of a new cash balance plan. The company promised to make an initial contribution to the cash balance plan equal to the value of the benefits earned under the old defined benefit plan. Future contributions would also be made on behalf of employees to the new plan.

The new plan guaranteed employees the greater of either: (A) the amount they would have been entitled to as of Jan. 1, 1998 under the old plan, or (B) the amount in their accounts at retirement. The company made various communications to participants which favorably described the new plan.

A group of retirees sued, claiming among other things that the new cash balance plan improperly reduced their previously-accrued benefits, and that the company had mischaracterized the plan in its communications to participants. The participants sought to have the plan restructured to provide the greater level of benefits to which participants claimed they were entitled based on the company's faulty disclosures.

The U.S. District Court for the District of Connecticut found that certain of the company's communications regarding the new plan were ''significantly incomplete and misled its employees.''[2] For example, the company said the new plan would ''significantly enhance'' its retirement program and that the company would not save money from the new plan. In fact, the company saved $10 million per year from the change.

Moreover, the company's ''initial contribution,'' which was intended to approximate the benefits accrued under the old plan, made many employees worse off in some respects. For example, one risk the new plan imposed on employees was diminished benefits in the event of low future interest rates. As the Supreme Court observed, ''most individuals are risk averse. And that means that most of CIGNA's employees would have preferred that CIGNA, rather than they, bear these risks.''

The district court found that CIGNA not only failed to disclose these downsides, but ''intentionally misled its employees.'' For example, a CIGNA company document acknowledged the company was ''focused on NOT providing employees before and after samples of the Pension Plan changes'' so they could compare the old and the new plans. The district court found that CIGNA violated ERISA Section 204(h), which requires notice of a reduction in future pension benefits, and ERISA's disclosure rules in Sections 102(a) and 104(b).

The district court did not, however, require each plan participant to show he or she had been personally harmed. Rather, the district court held that class-wide relief was appropriate because there was ''likely harm'' suffered by class members. As relief, the district court reformed the plan's guarantee to change it from the *greater of* (A) the amount participants would have been entitled to as of Jan. 1, 1998, under the old plan or (B) the amount in their accounts at retirement, to (A) *plus* (B).[3]

CIGNA appealed the decision to the U.S. Court of Appeals for the Second Circuit, which ultimately affirmed the district court's judgment.[4] CIGNA then appealed to the Supreme Court, challenging among other things the district court's holding that a showing of ''likely harm'' was sufficient to entitle participants to recover benefits based on faulty disclosures.

Supreme Court Decision

Significantly, in response to the Solicitor General's[5] argument that the district court was merely enforcing the relevant SPDs, which plaintiffs claim provided them a higher level of benefits, the Supreme Court stated that ''the summary documents, important as they are, provide communication with beneficiaries *about* the plan, but. . . their statements do not themselves constitute the *terms* of the plan for purposes of Section 502(a)(1)(B).'' (emphasis in original). The court concluded ''we cannot agree that the terms of statutorily required plan summaries necessarily may be enforced (under Section 502(a)(1)(B)) as the plan itself.''

The Supreme Court concluded that Section 502(a)(1)(B), which the district court had relied upon to change the terms of the plan, did not allow for the relief being sought. That is because the plaintiffs were not seeking to enforce the terms of the plan, but in effect to rewrite it.

Notably, the Supreme Court's decision was unanimous. The main opinion, authored by Justice Stephen Breyer, was joined by five other justices. Justices Antonin Scalia and Clarence Thomas issued a concurring opinion, and Justice Sonia Sotomayor took no part in the decision of the case.

In the majority opinion, the Supreme Court looked to Section 502(a)(3) of ERISA, which permits other forms of ''appropriate equitable relief.'' The court observed that ''what the District Court did here may be regarded as the reformation of the terms of the plan, in order to remedy the false or misleading information CIGNA provided.''

The court concluded that ''[t]he power to reform contracts. . . is a traditional power of an equity court.'' The court determined, therefore, that ''the types of remedies the court entered here fall within the scope of the term 'appropriate equitable relief' in Section 502(a)(3).''

The court further explained that ''[t]he relevant substantive provisions of ERISA do not set forth any particular standard for determining harm.'' However, ''when a court exercises its authority under Section 502(a)(3) to impose a remedy equivalent to estoppel, a showing of detrimental reliance must be made. But this showing is not always necessary for other equitable remedies,'' such as ''surcharge'' against a trustee. The court concluded that some type of harm must be shown to obtain such relief, albeit not to the level of detrimental reliance.

Significance and Relevance

The court's ruling is significant in three areas. First, the Supreme Court's discussion of equitable remedies is troubling, as the Supreme Court in portions of its analysis appears to conclude that monetary damages can, in some instances, be considered ''appropriate equitable relief.'' While there has been considerable litigation over the contours of the phrase ''appropriate equitable relief,'' courts interpreting ERISA have historically held that money damages are excluded from that definition.

The Supreme Court's ruling will surely open the doors for claims seeking money from employers and fiduciaries based only on ERISA Section 502(a)(3), which traditionally has been limited to a recovery of only non-monetary, injunctive relief.

The other two areas are, however, more favorable to employers. One of these, in fact, came as a surprise to those who had been following the case.

By way of background, many lower courts have historically held that a company was bound to provide the benefits set forth in an SPD, even where the summary

[2] *Amara v. CIGNA Corp.*, 534 F. Supp. 2d 288, 43 EBC 1011 (D. Conn. 2008) (33 PBD, 2/20/08; 35 BPR 469, 2/26/08).

[3] *Amara v. CIGNA Corp.*, 559 F. Supp. 2d 192 (D. Conn. 2008) (116 PBD, 6/17/08; 35 BPR 1509, 6/24/08).

[4] *Amara v. CIGNA Corp.*, 47 EBC 2709 (2d Cir. 2009) (192 PBD, 10/7/09; 36 BPR 2352, 10/13/09).

[5] (205 PBD, 10/26/10; 37 BPR 2397, 11/2/10).

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contained an error which suggested more generous benefits than those set forth in the main plan document. In *CIGNA*, the Supreme Court for the first time ruled that, at least with respect to claims for benefits under Section 502(a)(1)(B), a defective SPD will not override the terms of the main plan document.

This portion of the court's ruling is likely to give comfort to employers and drafters of SPDs, who have often struggled in trying to succinctly describe the often-complex benefits provided under their plans. In light of *CIGNA*, there is less risk that an inadvertent slip-up or scrivener's error will result in potentially significant liability down the road. This aspect of the court's ruling was surprising because, while the language in the summaries was an aspect of the case, it was not at all obvious that the court would resolve this issue.

Another particularly relevant aspect of the court's ruling is that ''likely harm'' on a class-wide basis is not enough. Rather, if they are to recover damages, participants must show something more. Where participants seek a remedy equivalent to estoppel, a showing of detrimental reliance must be made. That is a difficult standard for them to meet because they must show they took certain actions (or failed to take action) based on statements made by the employer. Detrimental reliance also likely precludes class certification because reliance raises individualized issues of fact.

Even where participants seek other types of equitable relief, such as surcharge against a trustee, participants will need to show something more than ''likely harm,'' albeit less than full detrimental reliance. While the Supreme Court left the full contours of its decision to be developed by the lower courts, it is clear that the court raised the bar for the type of harm that must be shown by participants to obtain relief. That is a welcome development for employers who sponsor these plans.

Conclusion

In *CIGNA*, the Supreme Court provided a somewhat mixed bag of rulings. *CIGNA* cannot be read as unequivocally pro-employer, as it contains troubling language regarding the availability of monetary relief under ERISA. Nonetheless, *CIGNA* contains a number of significant conclusions which are favorable to employers and which will provide ammunition for the defense of ERISA lawsuits.