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
Additionally, the majority also addressed the issue on which the Court originally granted certiorari – whether the district court had properly treated the claims under ERISA § 502(a)(3) as providing an equitable cause of action for the relief sought. The majority explained that ERISA grants courts of equity the power to 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 those theories. 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 those theories. 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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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