Supreme Court Retools ERISA Remedies for Misleading Summary Plan Descriptions

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On May 16, 2011, the Supreme Court in CIGNA Corp. v. Amara held that ERISA section 502(a)(1)(B) does not give a court authority to change the terms of a pension plan due to a misleading summary plan description ("SPD"), or to enforce the terms of an SPD as if it were part of the plan. Instead, that section provides a remedy only to enforce the actual terms of the formal plan documents. While this narrow holding gives some comfort to plan sponsors by putting to rest the notion that an SPD that conflicts with the terms of the plan could ever be controlling, the decision then opens a door for plaintiffs to seek equitable relief for inadequate or misleading disclosure in an SPD.

The Supreme Court’s opinion provides insight into what equitable remedies may be available to participants under Section 502(a)(3) of ERISA. These remedies include judicial reformation of a plan’s terms, so that it conforms to representations made to plan participants. Because plaintiffs in ERISA cases may use the CIGNA decision as a road map in seeking various equitable remedies, plan sponsors should carefully review their existing SPDs and other employee communications to ensure consistency with plan terms, especially when changes to benefit structures or formulas are implemented.

Background

The CIGNA case is one of many class actions that have challenged the conversion of a traditional defined benefit plan to a cash balance plan. For many years CIGNA sponsored a defined benefit pension plan that provided annuity retirement benefits based on a participant’s preretirement salary and years of service (the "Old Plan"). The Old Plan also included an option to receive reduced benefits upon early retirement at age 55. In 1998, CIGNA replaced this Old Plan with a new cash balance plan (the "New Plan") and each participant’s benefits accrued under the Old Plan were converted and transferred to the participant’s account under the New Plan. This “opening balance” was the discounted present value of the amount of the annuity that participants would have been entitled to receive under the Old Plan based on (1) their salary and years of service as of 1998 and (2) their projected future retirement dates. The New Plan provided that a participant would receive at retirement the greater of (A) the amount he or she was entitled
to receive under the Old Plan as of January 1, 1998 or (2) the amount in his or her individual account under the New Plan. This method of calculating the final retirement benefit after a cash balance conversion was commonly known as a “wear-away.”

CIGNA first communicated the change from the Old Plan to the New Plan through a company newsletter and then through a revised SPD. The District Court held that the SPD, as well as other communications, did not provide accurate and complete information about how the calculation of the “opening balance” would affect a participant’s benefits under the New Plan. In addition, the District Court ruled that the plan sponsor did not fully disclose the potential negative effects of the change from the Old Plan to the New Plan. For example, CIGNA told participants that the “opening balance” would “represent the full value of the benefit earned for service before 1998” even though it was actually a discounted present value taking into account certain assumptions. Further, the SPD intentionally did not include numerical examples that would demonstrate how the “opening balance” in the New Plan would be calculated for participants of the Old Plan, nor did it explain the impact of the wear-away.

Some participants brought a class action on behalf of approximately 25,000 beneficiaries of the Old Plan. Among other things, the plaintiffs claimed that CIGNA failed to give adequate notice of changes in their benefits under ERISA sections 204(h), 102(a) and 104(b) and challenged the adoption of the New Plan. The District Court held that the participants were “likely harmed” by the deficient SPD and were entitled to recover under ERISA section 502(a)(1)(B) through reformation of the New Plan terms to eliminate the wear-away, and to provide participants with the benefits accrued under the Old Plan and all amounts earned under the New Plan, (i.e., an A + B formula). Under section 502(a)(1)(B), a participant may sue “to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.” The Second Circuit affirmed the District Court’s ruling, but the Supreme Court agreed to review the issue of whether the District Court had applied the correct standard (“likely harm”) in holding that the participants had experienced sufficient injury to warrant relief under ERISA.

The Supreme Court’s Decision

The Supreme Court held that an SPD is not a plan document and rejected the lower court’s holding that ERISA section 502(a)(1)(B) authorized courts to reform the terms of an ERISA-governed plan because the plan sponsor had issued a misleading SPD. While closing that door, the Court opened another. It concluded that “appropriate equitable relief” could be available to the participants under ERISA section 502(a)(3) where communications about plan changes were incorrect or misleading. Although it is well established that the act of amending an ERISA plan is a plan sponsor decision and does not invoke fiduciary responsibilities, communicating those changes is a fiduciary act.

In a detailed discussion, the Supreme Court offered “guidance” on how various traditional equitable remedies such as reformation, estoppel and surcharge, if granted under section 502(a)(3), might effectuate the relief previously ordered by the District Court. The Supreme Court specifically noted that, under certain circumstances, “equitable relief” can include the imposition of something very similar to money damages—a “surcharge”—against a fiduciary where a loss results from a breach of fiduciary duty, or to prevent unjust enrichment.

Finally turning to the issue it had originally undertaken to review—the standard of harm required to support relief under ERISA—the Supreme Court noted that because ERISA section 502(a)(3) authorizes “appropriate equitable relief,” the relevant standard of harm will depend on the specific equitable theory relied upon by the court. The Court provided guidance on what level of harm could be required under the equitable theories applicable to this case:
Reformation: a showing of detrimental reliance is not required to correct the mutual understandings of the parties where there are fraudulent suppression(s), omission(s) or insertion(s) in the document;

Estoppel: a showing of detrimental reliance is required; and

Surcharge: a showing of “actual harm” to the participant—“that the violation injured him or her”—is required. This may include a showing of detrimental reliance, but may also be based upon the loss of a right protected under ERISA.

The Supreme Court did not determine what equitable theory should apply in this case or what level of harm must be shown to support its application. Instead, it left those issues to the District Court and the Second Circuit upon remand.

Implications for Employers

The CIGNA decision provides cold comfort to plan sponsors seeking to defeat ERISA claims based on faulty disclosures in participant communications or SPDs. While such claims cannot be pursued under ERISA section 502(a)(1)(B), they may be brought under section 502(a)(3). “Appropriate equitable relief” under that section will be left substantially to the discretion of lower court judges, and may include substantial monetary “surcharges” against ERISA fiduciaries where actual harm can be shown. Accordingly, plan sponsors should remain diligent in preparing the disclosures required under ERISA.

The CIGNA case should serve as a wake-up call, or at least a friendly reminder, that the information provided in ERISA legal notices, SPDs, and summaries of material modification (SMMs) is potentially actionable and should be carefully monitored and reviewed for accuracy and completeness, especially when significant changes to the benefits offered under a plan are adopted. While an SPD or SMM need not provide the same level of detail and specificity required under the formal plan document, the information provided in the SPD or SMM should (i) be current, (ii) at least be sufficiently comprehensive to apprise the participants and beneficiaries accurately of their rights and obligations under the plan, (iii) be written in a manner that is calculated to be understood by the average plan participant, (iv) provide clarifying numerical examples and illustrations where appropriate and (v) not mislead or misinform plan participants. These points apply particularly in the case of disclosures regarding plan amendments that limit, restrict or reduce plan benefits.

If you would like any assistance or if you have any questions regarding the content of this publication, please contact the Pillsbury attorney with whom you regularly work or the authors below.

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