ERISA Litigation Update

CIGNA Corp. v. Amara: In One Fell Swoop, Supreme Court Shakes Two Principles That Were Thought to Be Bedrock

*In CIGNA Corp. v. Amara, the Supreme Court was asked to consider whether participants could prevail against CIGNA on a showing of "likely harm" rather than "actual harm" when they alleged injury resulting from various ERISA violations relating to CIGNA's conversion from its traditional defined benefit plan to a cash balance plan [No.09-804, 2011 U.S. LEXIS 3540 (May 16, 2011)]. The district court, affirmed by the Second Circuit, had held that class-wide relief could be awarded based on a showing of likely harm. The Supreme Court reversed that holding, finding that participants had to show actual harm to obtain relief for the alleged ERISA violations. [*Id. *at 40–42.]*

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In the process of considering the standard of prejudice, the Supreme Court commented on the legal effect of summary plan descriptions ("SPDs") and once more considered the relief available under ERISA's catch-all civil enforcement provision—the latter point albeit in *dicta*.

The Facts of *Amara*

In 1997, CIGNA announced to its employees that it intended to put in place a cash balance plan ("cash balance plan" or "new plan") that would replace its existing traditional defined benefit pension plan ("the old plan"), effective January 1, 1998. In November 1998, 11 months after the new plan's effective date, CIGNA sent out additional information describing the terms of the new plan. That communication explained that the new plan consisted of individual retirement accounts comprised of bookkeeping entries backed by a CIGNA-funded trust. It further explained that, under the terms of the new plan, CIGNA was obligated to contribute annually to each individual account an amount equal to between three percent and eight and one-half percent of the employee's salary, depending upon age, length of service, and other factors. At retirement, a participant could expect to receive the amount in his or her individual account in the form of either a lump sum or an annuity. [*Id.* at *10–14.]

With respect to the vested account balances in the old plan, CIGNA "promised to make an initial contribution to the individual's account equal to the value of that employee's already earned benefits." [*Id.* at *12.] The new plan also guaranteed that, upon retirement, participants would receive "the greater of (i) the amount to which they had become entitled as of January 1, 1998, or (ii) the amount in their individual accounts." [*Id.* at *13–14.]

The district court noted that, in the November 1998 communication, CIGNA described the new plan as having "significantly" enhanced benefits and made other statements that described the plan as a more attractive retirement plan with at least the same security as the old plan. [*Id.*] The district court determined that CIGNA's initial descriptions of the new plan were "significantly incomplete and misled its employees." [*Id.*] Among the infirmities the district court cited were CIGNA's failure to inform participants that the new plan shifted the risk of falling interest rates to them, which, among other things, meant that annuities would become more expensive if interest rates were down when a participant retired. The district court found that CIGNA's failure to tell

its employees about the new plan's negative features supported a finding that CIGNA intentionally misled its employees.

The District Court's Remedy?

The district court found that CIGNA's conversion to a cash balance plan worked a significant reduction in the rate of future accrual and therefore that CIGNA was obligated to provide participants with an ERISA Section 204(h) notice. Section 204(h) forbids a plan amendment that significantly reduces future benefit accruals without first providing advance notice to participants [Amara v. CIGNA Corp., 559 F. Supp. 2d 192, 206 (D. Conn. 2008)]. The district court determined that CIGNA's notices to participants contained material misrepresentations because, rather than inform participants about the potential for a reduction in the future rate of benefit accruals, CIGNA "misled" participants "into believing that significant reductions . . . were not a component or a possible result of" the conversion to a cash balance plan. [*Id.*] The district court also found that CIGNA violated ERISA Sections 102(a) and 104(b), which require that plan administrators timely distribute SPDs and summaries of material modifications ("SMM") that accurately describe the terms of the plan and reasonably apprise participants of their rights and obligations under the plan [*Amara*, 2011 U.S. LEXIS at 20].

The district court agreed with CIGNA that only employees harmed by CIGNA's disclosure failures could obtain relief. It did not, however, require that each participant prove individual harm. Rather the district court found that the relevant evidence raised a "presumption" that class members suffered "likely harm"; and that CIGNA had failed to rebut this presumption. [*Id*. at *20–21.] The district court also concluded that this showing was sufficient to warrant class-wide relief. [*Id*. at *21.]

The district court considered various remedial options under ERISA Section 204(h), including whether it had the power to reinstate the pension plan, but rejected these options either because it did not believe the remedy was appropriate or because it concluded that the options would "harm not help" the participants. [*Id.* at *21–22.] The district court ultimately decided to reform the terms of the new plan by obligating CIGNA to provide the accrued benefits under the old plan on the date the benefits were frozen plus future accruals under the new plan. [*Id*. at *22–23]. The district court based its authority to enter this relief under ERISA Section 502(a)(1)(B). That provision allows a participant to bring an action to (i) recover benefits due him/her under the terms of a plan, (ii) enforce rights under the terms of the plan, or (iii) clarify rights to future benefits under the terms of the plan. The district court concluded that the remedy it had constructed in effect "awarded benefits under the terms of the plan as reformed" [*Id.* at *23 quoting Amara v. CIGNA Corp., 559 F. Supp. 2d 192, 212 (Conn. 2008)].

The Supreme Court's Opinion

Actual Harm Is Required

As noted earlier, the Court reversed this portion of the district court's ruling, holding instead that the participants needed to show actual harm. [*Id*.] The Court, however, rejected CIGNA's argument that participants must also show detrimental reliance and harm. Instead, the Court opted for a slightly lower standard of prejudice that it believed was more consistent with traditional equitable remedies. [*Id*. at 38–41.]

The SPD Does Not Constitute the "Terms" of the Plan Document

The Supreme Court rejected the assertion that Section 502(a)(1)(B) grants courts the authority to reform the terms of a plan. [*Id*. at *26.] The Court noted that the district court ordered relief in two steps. In Step 1, the district court "ordered the terms of the plan reformed" so that it would provide a benefit that constituted the benefits offered under the old plan plus the future accruals under the new plan. [*Id*. at *25.] In Step 2, the district court ordered the plan administrator to enforce the plan as reformed. [*Id*. at *25–26.] The Court understood how Step 2 fell within the authority of Section 502(a)(1)(B), because it noted that that provision grants a participant to bring an action to "recover benefits due . . . under the terms of his plan." [*Id*. quoting ERISA § 502(a)(1)(B).] But, the Court did not find any authority for plan reformation in Section 502(a)(1)(B). Moreover, the Court resoundingly rejected the Solicitor General's and plaintiffs' view that the terms in a summary plan description constitute the terms of the "plan." [*Id*. at *27–30.]

The Court concluded by summarizing the issue as follows: "[T]he summary documents, important as they are, provide communication with beneficiaries *about* the plan, but that their statements do not themselves constitute the *terms* of the plan for purposes of

§ 502(a)(1)(B).” [*Id.* at 30 (emphasis in the original)] As noted earlier, *Amara* likely calls into question all earlier cases, of which there are many, holding that where there is a conflict between the SPD and the plan document, the SPD trumps the plan document.

Monetary Relief May Be Available Under Section 502(a)(3)

While the Court found that Section 502(a)(1)(B) does not authorize reforming the terms of a plan document, it held that ERISA Section 502(a)(3) does. The Court then went on to discuss, in what Justice Scalia referred to as “blatant dictum,” that the district court’s relief would likely fall within Section 502(a)(3). [*Id.* at 30–37; 46.] This Section of ERISA allows a participant, beneficiary, or fiduciary “‘to obtain other *appropriate equitable relief*’ to redress violations of (here relevant) parts of ERISA ‘or the terms of the plan.’” The Court noted that the district court “strongly implied” that it would have based its relief under Section 502(a)(3) but for the fact that (1) it had provided relief under Section 502(a)(1)(B); and (2) certain Supreme Court cases had narrowed the application of equitable relief under Section 502(a)(3) to exclude any monetary recovery. The Court stated that the district court’s concern with respect to this last point was “misplaced.” [*Id.* at *31.]

The Court distinguished its earlier holdings rejecting monetary relief under Section 502(a)(3), because the relief sought in those earlier cases did not involve a participant or beneficiary seeking relief against a fiduciary. [*Id.* at *31–33, discussing Mertens v. Hewitt Assocs., 508 U.S. 248 (1993) (participants seeking relief against a nonfiduciary actuarial firm); Great-West Life & Annuity Insurance Co. v. Knudson, 534 U.S. 294, 218 (2002) (fiduciary action against tort-award-winning beneficiary); Sereboff v. Mid Atl. Med. Servs., Inc., 547 U.S. 356 (2006) (same).] *Amara*, the Court said:

> ...concerns a suit by a beneficiary against a plan fiduciary (whom ERISA typically treats as a trustee) about the terms of a plan (which ERISA typically treats as a trust) . . . It is the kind of lawsuit that, before the merger of law and equity, respondents could have brought only in a court of equity, not a court of law. [*Id.* at *32.]

The Court then went on to explain that the district court’s “affirmative and negative injunctions obviously fall within” the category of equitable relief. [*Id.* at *33.] The Supreme Court then stated that the relief the district court ordered resembles at least three other types of traditional equitable remedies. First, reformation of a contract to prevent fraud or mistake was a traditional power of an equity court. [*Id.* at *34.] Second, the district court’s remedy “essentially held CIGNA to what it had promised, namely that the new plan would not take from its employees benefits they had already accrued.” [*Id.* at *35.] This relief said the Court resembles equitable estoppel, which operates as a form of make-whole remedy. [*Id.*] Third, the district court ordered CIGNA to pay participants the benefits owed under the reformed plan terms. Although, this remedy takes the form of monetary relief, the Court said that “it does not remove it from the category of traditionally equitable relief.” [*Id.* at *35–36.] Equity courts were empowered to provide monetary relief for a loss caused by the trustee’s breach of duty, or to prevent the trustee’s unjust enrichment. [*Id.* at *36.] Thus, said the Court:

> ...insofar as an award of make-whole relief is concerned, the fact that the defendant in this case, unlike the defendant in *Mertens,* is analogous to a trustee makes a critical difference. . . In sum, contrary to the District Court’s fears, the types of remedies the court entered here fall within the scope of the term “appropriate equitable relief “ in § 502(a)(3). [*Id.* at *37 (internal citations omitted).]

The Court vacated the district court’s judgment and remanded the case to the district court to explore whether the “general principles” it discussed concerning equitable remedies would be applicable to the case. [*Id.* at *41–42.]

Justice Scalia’s Concurrence

Justice Scalia joined in the judgment, but only agreed with part of Justice Breyer’s reasoning. He agreed that the Court was correct in holding that Section 502(a)(1)(B) was not the appropriate enforcement vehicle in the case. He would have reversed that holding of the lower courts, and then remanded for further consideration of the appropriate remedies. Instead, the Court stretched —in Justice Scalia’s view—to muse on all sorts of remedial and injury issues that were not squarely before the Court. In particular, he singled out the Court’s statements regarding the potential availability of monetary relief under Section 502(a)(3) as “blatant dictum.” [*Id.* at *47.]

Conclusion

It is worth repeating that the narrow question technically before the Court was whether plaintiffs could

obtain class-wide relief on a showing that the class as a whole was "likely harmed." [*Amara*, 2011 U.S. LEXIS at *37–42.] The *Amara* case opens the door to monetary relief under Section 502(a)(3) against fiduciaries that are found to have violated ERISA, although it leaves intact earlier rulings that money damages are otherwise unavailable under Section 502(a)(3).

This case also resolves an important issue for plan sponsors regarding the relevance and/or importance of the plan document versus the SPDs. Although many, if not most, SPDs include disclaimer language that any inconsistency between the SPD and plan document will be resolved by the terms of the plan and not the SPD, few courts have agreed with this position. The SPD is the document that participants are given to read. For this reason, courts have usually held that when the terms of the SPD conflict with the terms of the plan, the SPD controls. *Amara* calls into question all those holdings. While this holding may seem favorable to plan sponsors at first blush, SPDs are still the main method through which plan administrators communicate with participants and therefore they should still be accurate or plan fiduciaries may still be exposed to allegations that the SPD contains misrepresentations. ■

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