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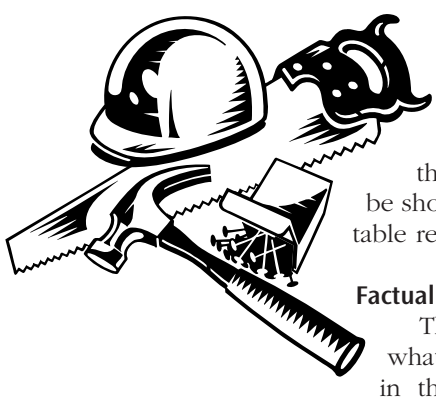
Cigna Corporation v. Amara: Supreme Court Clarifies ERISA-Provided Remedies for Misrepresentations in Summary Plan Descriptions

Among the obligations imposed by the Employment Retirement Income Security Act (ERISA) of 1974 are notice requirements for informing participants and beneficiaries about their plan and how it operates. These notices, the most well-known being the Summary Plan Description (SPD), must be written in a way the average participant can understand and must be sufficiently comprehensive to apprise covered persons of their benefits, rights, and obligations under the plan. ERISA §§ 101, 102, and 104.[1]

The extent to which statements in an SPD or other notices are binding upon a plan when they are inconsistent with the terms of the plan has been a frequently litigated issue as are the remedies available to plan participants for such misrepresentations. Earlier this spring, the Supreme Court issued an 8-0 opinion[2] clarifying the remedies available to employee benefit plan participants under ERISA for misrepresentations or misleading information as to the terms of the plan made in an SPD. In *Cigna Corporation v. Amara*, 131 S. Ct. 1866 (May 16, 2011), the Supreme Court held that an SPD does not constitute the terms of the plan, even if the terms are inconsistent with the plan document. The Court further held that ERISA's provision that enforces recovery of benefits does not empower a court to change the terms of a plan. However, failure to comply with ERISA's SPD notice requirements *may* entitle plan participants to other remedies under the "other appropriate equitable relief" catch-all provision, and the standard of harm required to be shown will be defined by the equitable remedy that has been fashioned.



Factual Background of the Case

The facts in the case arise from what has become a familiar scenario in the realm of employee benefit plans: conversion of a pension plan from a defined benefit plan to a cash balance plan. In 1998, Cigna switched its pension plan from a defined benefit plan to a cash balance plan. Under the defined benefit plan, retiring Cigna employees received an annual benefit that was payable for the remainder of their lives; the amount of the benefit was based on years of service and salary. By contrast, the cash balance plans did not offer retiring employees a guaranteed annual benefit for life upon retirement. Rather, employees were assigned an account to which Cigna makes a contribution each year; the employees accrue the interest that is earned on the contribution. Under the cash balance plan, upon retirement, employees could elect to receive the balance of their account as a lump sum payment or as an annuity.

To inform its employees of the changes in the pension plan, Cigna sent its employees newsletters and pamphlets and also issued an SPD. The SPD of the CIGNA pension plan was supposed to provide a plain-language description of the important features of the plan, such as the benefits it provides and how it operates.

Plaintiffs, acting on behalf of a class of more than 25,000 beneficiaries of the Cigna pension plan, brought a suit against CIGNA challenging the conversion to a cash balance plan and claiming that the notices provided by CIGNA, including the SPD, were misleading because they did not adequately explain that employees would receive benefits that were less than the amount provided under the converted plan.

After a bench trial, the district court concluded that CIGNA's Summary Plan Descriptions and other materials describing the conversion and the changes in benefits did not comply with the notice requirements under ERISA and in some instances were "downright misleading." For example, the court found that CIGNA's description of the new plan failed to adequately inform employees of the elimination of early retirement benefits and failed to explain that participants would bear the risk of falling interest rates. The district court held that the deficiencies in CIGNA's notice caused the employees "likely harm" and proceeded to change (or "reform") the terms of the converted plan so that it more closely resembled the old plan. The district court fashioned the reformation remedy under one of ERISA's civil enforcement provisions: § 502(a)(1)(B), which allows a plan participant to bring a civil action "to recover benefits due to him under the terms of his plan." CIGNA appealed the district court's judgment, and the Second Circuit affirmed the lower court.

Question Presented to the Supreme Court

The question presented to the U.S. Supreme Court was "whether a showing of 'likely harm' is sufficient to entitle participants in or beneficiaries of an ERISA plan to recover benefits based on an alleged inconsistency between the explanation of benefits in the Summary Plan Description or similar disclosure and the terms of the plan itself." Despite this narrow inquiry, the Supreme Court stepped back to decide a more basic issue: whether ERISA's "recovery of benefits" provision, § 502(a)(1)(B),[3] authorized the district court to actually change back or "reform" the terms of CIGNA's plan to agree with the erroneous SPD's description of benefits. The Supreme Court's answer to this question was "no." Instead, the Court found another avenue for the relief sought by the plaintiffs: ERISA's § 502(a)(3)(B),[4] which allows a plan participant to obtain other equitable remedies—such as reformation, estoppel, and even monetary relief in the form of a surcharge—for a plan administrator's failure to provide adequate notice of a plan's terms.

Holding #1: The Terms of an SPD Are Not Enforceable Under ERISA's Recovery of Benefits Provisions

The Supreme Court unequivocally held that a Summary Plan Description or a similar notice is not the equivalent of a plan document. Despite abundant case law from appellate courts holding that the terms of an SPD may become the terms of a plan, the Supreme Court categorically disagreed. Rejecting the argument that terms of the summaries are terms of the plan, the Court found that ERISA's provisions requiring that participants and beneficiaries be advised of their rights and obligations "under the plan" suggests that "the information *about* the plan provided by those disclosures is not itself *part of* the plan."[5] The Court held that the basic objective of the Summary Plan Description is "clear, simple communication" and "to make the language of a plan summary legally binding could well lead plan administrators to sacrifice simplicity and comprehensibility in order to describe plan terms in the language of lawyers."[6]

As to the district court's remedy, the Supreme Court held that the district court's actions in reforming the terms of CIGNA's pension plan were not authorized by ERISA's recovery of benefits provision, § 502(a)(1)(B). In so holding, the Court observed that this section of ERISA's civil enforcement provision "speaks of 'enforc[ing]' the plan's terms, not changing them" and it "does not suggest that it authorizes a court to alter those terms here, where the change, akin to reforming a contract, seems less like the simple enforcement of a contract as written and more like an equitable remedy."[7]

Holding #2: Other Equitable Remedies Might Be Available

Although the Court rejected the remedy designed by the district court under ERISA's recovery of benefits provision, it held that a different equity-related ERISA provision, § 502(a)(3)(B), authorizes forms of relief similar to those that the lower court entered. The standard of harm to be shown by plan participants will depend upon the equitable theory by which the district court provides relief.

Aside from affirmative and negative injunctions, other equitable remedies that a plan participant might be entitled under this section include the following:

- *Reformation of the term's plans to remedy false or misleading information.* The Court held that a plan participant may be entitled to reformation of the term's plan and a participant does not need to prove a "detrimental reliance" before this remedy can be obtained.
- *Equitable estoppel remedies to place the person entitled to the plan's benefit in the same position he or she would have been in had the representations been true.* When a court exercises authority to impose a remedy equivalent to estoppel under § 502(a)(3), a showing of detrimental reliance must be made. In other words, a plan participant must show that the misrepresentation "in truth, influenced the conduct of" the plaintiff, causing "prejudic[e]."[8]
- *Monetary compensation, known in equity as a "surcharge," which requires the plan administrator to pay already retired beneficiaries money owed them under the plan as reformed.* The Court observed that the fact that a surcharge remedy takes the form of a monetary payment does not remove it from the category of traditionally equitable relief. This remedy does not require a detrimental reliance but it does require a participant to show "actual harm."

The Supreme Court remanded the case to the district court to determine whether plaintiffs had demonstrated by a preponderance of the evidence that they were "actually harmed" by CIGNA's violation of ERISA's SPD disclosure requirements.

In a concurring opinion, Justice Scalia, joined by Justice Thomas, agreed that § 502(a)(1)(B) does not authorize relief for misrepresentations in an SPD but criticized the majority for going above and beyond the question presented to the Court. Calling it a "blatant dictum," Justice Scalia saw no reason to evaluate whether other provisions of ERISA's civil enforcement remedies allowed for similar relief.[9]

Implications

In light of this opinion, plan administrators should take a closer look at the Summary Plan Descriptions of their employee benefit plans to make sure the SPDs adequately and correctly describe the terms of the plan. While the opinion in *Cigna v. Amara*

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Department of Defense. After the discussion, panelists and their audience attended a happy hour so that they could continue their discussions.

Finally, the program included a panel focused on employment, at which two distinguished lawyers, Hon. Andrew S. Effron, chief judge of the U.S. Court of Appeals for the Armed Forces, and Richard Wiley, a partner at the law firm Wiley Rein LLP, discussed various career options, including private practice, government service, and judicial clerkships. The panelists offered a unique comparison of what it was like to work in the public and private sectors, answered questions about how to obtain employment, and offered several tips about writing cover letters, preparing a resume, choosing a writing sample, and interviewing.

The program truly exposed students to great places to go as well as stories about how to get there. **TFL**

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and administrative improvements to the veterans disability claims process in the Department of Defense and Department of Veterans Affairs to assure equitable and expeditious determinations.

Attorney Fee-Based Representation of Veterans

The Federal Bar Association supports proposals to expand the availability of fee-based representation of veterans in the disability claims process and to oppose any efforts to repeal the authority of attorney representation to veterans in the furtherance of such claims.

Frivolous Litigation

The Federal Bar Association opposes legislative proposals to eliminate judicial discretion in the imposition of sanctions for frivolous litigation, including proposals to revise Rule 11 of the Federal Rules of Civil Procedure by imposing mandatory sanctions and preventing a party from withdrawing challenged pleadings on a voluntary basis within a reasonable time. **TFL**

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makes clear that an SPD does not constitute the plan document or the terms of the plan, misrepresenting and misleading statements contained in an SPD may entitle plan participants to equitable remedies by a mere showing of likely harm. **TFL**

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Endnotes

[1]29 U.S.C. §§ 1021, 1022, and 1024. *See also* 29 C.F.R. §§ 2520.102-2 and 2520.102-3.

[2]Associate Justice Sotomayor took no part in the consideration of the case or in the decision that was handed down.

[3]29 U.S.C. § 1132(a)(1)(B).

[4]29 U.S.C. § 1132(a)(3)(B).

[5]*Cigna Corporation v. Amara*, 131 S. Ct. 1866, 1877 (May 16, 2011) (Emphasis in original).

[6]131 S. Ct. at 1877–78.

[7]131 S. Ct. at 1878.

[8]131 S. Ct. at 1881.

[9]131 S. Ct. at 1884.