

## The Supreme Court Speaks on the Remedies for Benefits Description Mistakes

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In vacating and remanding a district court and U.S. Court of Appeals decision in favor of a plaintiff class of beneficiaries of the CIGNA Pension Plan, *see Amara v. Cigna, Corp.*, 559 F. Supp. 2d 192, (D. Conn. 2008), *aff'd* 348 Fed. Appx. 627 (2d Cir. 2009), the Supreme Court of the United States reached three conclusions that have significant repercussions for benefit plan sponsors and benefit plan litigation. First, the Supreme Court held that plan summaries do not constitute plan terms, and as such, an Employee Retirement Income Security Act (ERISA) § 502(a)(1)(B) claim for benefits cannot be the basis for a court to rewrite plan terms and order relief based upon the summary plan description. Second, the Supreme Court held that ERISA § 502(a)(3) may provide a remedy for mistakes in a summary plan description (SPD), but only when plaintiffs can show actual harm by a preponderance of the evidence. Third, the Supreme Court rejected a bright-line requirement that plaintiffs must show detrimental reliance in order to recover for mistakes made in SPDs.

Plaintiffs had filed a class action against CIGNA Corp. and the CIGNA Pension Plan (collectively, CIGNA) claiming that the company's 1998 conversion from a traditional pension plan to a cash balance plan violated ERISA's disclosure requirements during the transition. The district court agreed, ruling that the company failed to give respondents proper notice of changes to their benefits, particularly because the new plan, in certain respects, provided respondents with less generous benefits. Awarding class-wide relief on the basis that all respondents were "likely harm[ed]" by CIGNA's inadequate disclosures, the district court "reformed" the new plan and ordered CIGNA to pay benefits according to the "reformed" plan under ERISA § 502(a)(1)(B), which allows claims for benefits under the terms of the plan. The Second Circuit affirmed the district court's ruling.

Disagreeing with much of the district court's opinion and approach, the Supreme Court first ruled that the district court erred in holding that ERISA § 502(a)(1)(B) granted it the authority to reform the terms of a pension plan. In the Supreme Court's view, ERISA § 502(a)(1)(B) speaks only of "enforcing the terms of the plan, not of changing them." However, the Supreme Court went on to hold that there was a different way for participants to recover – ERISA § 502(a)(3), which allows for a participant, beneficiary or fiduciary "to obtain *other appropriate equitable relief*" to redress violations of ERISA or the terms of the plan. The Supreme Court thus suggested that the district court could provide relief for respondents, if it so chose on remand, using the equitable theories of reformation of a contract, estoppel and surcharge.

It is the Supreme Court's discussion about these equitable remedies that is most disturbing, as the Supreme Court essentially concludes that monetary damages can, in some instances, be considered "appropriate equitable relief." The Supreme Court's ruling will surely open the doors for claims seeking money from employers and fiduciaries based only on ERISA § 502(a)(3), which traditionally has been limited to a recovery of only non-monetary, injunctive relief.

In a move that will gratify plan sponsors, administrators and fiduciaries, the Supreme Court next concluded that plan summaries, including summary plan descriptions and summaries of plan modifications, do not constitute plan terms. Accordingly, the basis of an ERISA § 502(a)(1)(B) claim for benefits cannot be a wrong representation made in a summary plan document. The Supreme Court's decision plainly recognizes that these documents are meant to assist participants and beneficiaries in understanding the benefits made available to them, and should not be legally binding on either the plan's sponsor or its administrator. Indeed, "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," thereby defeating the fundamental purpose of summaries. While the Supreme Court's opinion certainly does not eliminate the need for accuracy in summary plan documents, it does offer additional protection against claims where the documents at issue contained innocent mistakes or omissions.

In another win for ERISA defendants, particularly in large class actions, the Supreme Court also rejected the district court's "likely harm" standard, holding instead that plaintiffs are required to show actual harm by a preponderance of the evidence in order to have a claim. In the Supreme Court's view, actual harm may sometimes consist of detrimental reliance (depending on the relief sought), but it may also come from the loss of a right protected by ERISA or its trust-law

antecedents. The Supreme Court undoubtedly felt considerable sympathy for the situation of the CIGNA plaintiffs and their right to get a recovery of money damages. Regardless, its ruling now establishes a more onerous burden for plaintiffs than in some prior cases, as there was a split in the circuits with some courts holding that a claim under ERISA could lead to a recovery even if plaintiffs could not demonstrate actual harm.

The authors recently hosted a 25-minute teleconference addressing this Supreme Court decision. [Click here to listen](#) (or right click and select "Save As" to save to your machine and open in the default audio player of your choice).

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