

Retirement Plans: Supreme Court Says SPD Terms Not Enforceable As Plan Terms

Court's holding leaves opening for showing actual harm

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On May 16, 2011, the U.S. Supreme Court in *CIGNA Corp. v. Amara* concluded that summary plan descriptions (SPDs) are neither part of a retirement plan nor an amendment modifying the plan so as to entitle a participant to “benefits” under the plan in accordance with Section 502(a)(1)(B) of the Employee Retirement Income Security Act (ERISA).

Despite this narrow holding, the Supreme Court, in dicta, expanded the scope of equitable relief available under ERISA 502(a)(3), suggesting that the traditional equitable remedies of reformation, equitable estoppel or surcharge are available to provide relief, and that a showing of detrimental reliance is not required for all equitable remedies, but plaintiffs must show “actual harm.”

The Supreme Court’s decision, however, essentially negates lower court decisions that held where there is a discrepancy between the plan document and the summary plan description, the participant may enforce the terms of the summary plan description, if better, as the terms of the plan. Now, plaintiffs will have to prove damages in accordance with the equitable remedy sought. Where the discrepancy between the plan and the SPD is inadvertent and the plaintiffs are relying on equitable estoppel, detrimental reliance will be required. Material intentional discrepancies will likely only require a showing of actual harm.

Background

In 1998, CIGNA converted its traditional defined benefit plan (providing 60 percent of final average pay) to a cash balance plan. The retirement benefits that an employee earned under the traditional defined benefit plan were to be converted to an initial account balance in the cash balance plan that would equal the value of the employee’s benefits already earned. CIGNA sent a newsletter to employees stating that the new plan would “significantly enhance” their retirement benefits, that it would provide “the same benefit security” with “steadier benefit growth,” and that the company would not gain cost savings as a result of the change.

The district court found that CIGNA’s statements to employees were not only incomplete and inaccurate but intentionally misleading. It found the company saved \$10 million annually in the conversion, that a significant number of employees were worse off in the conversion, and that the company intentionally failed to provide individual comparisons on projected retirement benefits.

The district court concluded as a matter of law that: (1) the company violated ERISA 204(h) by providing for a significant reduction in future benefit accruals without providing an accurate summary of the amendment, and (2) the company violated ERISA Sections 102(a) and 104(b) by failing to provide sufficiently accurate and comprehensive summary plan descriptions and summaries of material modifications.

The district court ordered relief in a two-step process. First, it ordered the plan reformed to provide the promised benefit. Instead of providing the greater of “A” (the benefit under the old plan) or “B” (the benefit under the new plan), the court reformed the plan to provide “A” (the benefit under the old plan) *plus* “B” (the benefit under the new plan). Second, it ordered the plan administrator to enforce the newly reformed plan and pay the benefits pursuant to ERISA 502(a)(1)(B) under the plan as reformed.

The holding

On appeal the Supreme Court held that Section 502(a)(1)(B) of ERISA does not give a court the power to change the terms of a plan from those adopted by the company. In so holding, the Court rejected the position of the solicitor general that the provisions of the summary plan description constituted provisions of the plan document. The Court noted that creating the terms of the plan was a settlor function, while the providing of a summary plan description is an administrative function, i.e., providing information *about* the plan does not constitute the *terms* of the plan. Moreover, turning plan summaries into plan terms would sacrifice the simplicity and comprehensibility required by ERISA.

The interesting dicta

Although holding that ERISA Section 502(a)(1)(B) does not give courts the power to redraft plan terms, the Court suggested that relief may be found in the “appropriate equitable” remedies of Section 502(a)(3) of ERISA. The Court indicated that the remedies of reformation, equitable estoppel and surcharge are available under ERISA Section 502(a)(3). It also suggested the plan could be reformed in order to remedy the false or misleading information CIGNA provided.

The concurring opinion, however, expresses doubt as to the reformation approach, noting that the misrepresentations were made by a third party in an administrative capacity and not by a party to the contract in a settlor capacity. In addition, reformation is meant to effectuate mutual intent at the time of contracting, and such intent is not retroactively revised by subsequent misstatements.

Both the majority and the concurrence seem to agree that equitable estoppel and surcharge may be better theories on which plaintiffs may prevail when the terms conveyed by the administrator differ from that of the plan document. However, both the majority and the concurrence indicate that while reliance is not a condition for all equitable remedies, it is necessary to establish equitable estoppel.

The majority further notes that an equitable remedy of “surcharge”—a monetary remedy against a fiduciary for breach—may be available without providing detrimental reliance,

but the Court noted that the plaintiffs must show “actual harm.”

The concurring opinion notes that the actual harm suffered by the employees—harm stemming from reliance on the summary plan description or the lost opportunity to contest the change of plans—may necessitate a different remedy than that imposed by the district court. In addition, the concurrence questions whether the broad relief granted by the district court would be allowable as an equitable surcharge under *Mertens v. Hewitt Associates*, 508 U.S. 248 (1993).

Conclusion

While the Supreme Court’s opinion settles the issue that a summary plan description is not a plan document enforceable under Section 502(a)(1)(B) of ERISA, it leaves open the boundaries of Section 502(a)(3) when fashioning an equitable remedy of reformation, equitable estoppel or surcharge. In addition, it raises the issue of whether the plaintiff can establish actual harm and causation for the equitable remedy sought to be enforced.

Because the case was remanded for further proceedings, it will be a number of years before the scope of equitable relief is determined. In the meantime, plaintiffs may find it difficult to prevail on inadvertent discrepancies between the plan document and the summary plan description without a showing of detrimental reliance.

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