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The Supreme Court Holds that Reformation of ERISA Plan Terms Due to False or Misleading Plan Summaries Does Not Strictly Require a Showing of Detrimental Reliance

May 19, 2011

On Monday, the Supreme Court decided in *CIGNA Corp. v. Amara*, No. 09-804, that courts may reform the terms of retirement plans subject to the Employee Retirement Income Security Act of 1974 ("ERISA") under traditional equitable principles where Summary Plan Descriptions ("SPD") or Summary of Material Modifications ("SMM") are false or misleading. In so doing, the Court also held that the showing of harm required of plaintiffs will depend on the type of equitable remedy invoked to reform the plan terms.

BACKGROUND

In 1998, CIGNA transitioned its ERISA-governed defined benefit plan from a final average pay plan to a cash balance pension plan. Under the final average pay plan, employees earned benefits over time based on their service and salary, receiving at retirement an annuity that provided them with an annual benefit payable for life. Under the cash balance pension plan, employees also earned benefits over time based on service and salary. In contrast to the final average pay plan, under the cash balance plan each employee was assigned a hypothetical account containing pay credits based on service and salary as well as interest credits, which accrued over time. At retirement, employees could receive the amount in their hypothetical account either as a lump sum or in the form of an annuity.

In making this transition, CIGNA converted each plan participant's accrued benefit under the old plan into a lump sum and credited the amount of that lump sum to each participant's new cash balance plan hypothetical account as his or her opening balance. Under the new plan, participants were guaranteed to receive no less than their accrued benefit under the old plan at the time of the transition. Absent that guarantee, because of differences in the way that benefits were calculated under the new plan, the payout under the new plan had the potential to be lower than under the old plan for some participants. In situations in which the value of a participant's benefits under the original plan was greater than under the new plan, there was a period of time when participants would work and the value of their benefits under the new pension plan would increase, but their right to benefits would remain constant. This situation would arise because the value of the benefits under the old plan remained greater than the

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benefits calculated under the new formula. During this time, benefits accumulated by the participant under the new plan are alleged to have "worn away" the difference in value between the plans until the value of the benefits under the new plan exceeded the lump sum benefits credited from the old plan. CIGNA allegedly failed to disclose the possibility of "wear away" in various documents provided to participants describing the changes to the plan, including a SMM and SPD.

In 2001, respondents filed a class action lawsuit against CIGNA in the United States District Court for the District of Connecticut, claiming that the cash balance plan itself, and the documents describing the cash balance plan transition, violated ERISA. Although the District Court found that the cash balance plan itself did not violate ERISA, the District Court also concluded that CIGNA's plan summary documents were inadequate and, in some instances, misleading absent disclosure of the possibility of "wear away." The District Court found that the class could recover for the inadequate disclosures because respondents had made an initial showing of likely harm on the grounds that these documents likely and reasonably led plan participants to believe that wear away was an unlikely result of the plan transition. The District Court therefore held that the terms of the new plan had been modified by these plan summary documents.

CIGNA appealed to the Second Circuit Court of Appeals which summarily affirmed the District Court. To recover, the Second Circuit had previously held that a plan beneficiary must show "likely harm." Many other circuits, including the First, Fourth, Seventh, Eighth, Tenth, and Eleventh Circuits, impose a stricter standard, requiring proof that the beneficiaries relied on an SPD or were prejudiced by the inconsistency. The Third, Fifth, and Sixth Circuits, by contrast, impose a more lenient standard, requiring only a material conflict between the SPD and the plan itself.

On June 28, 2010, the Supreme Court granted CIGNA's petition for writ of certiorari to resolve this question and oral argument was held on November 30, 2010.

SUMMARY OF THE DECISION

In its opinion, written by Justice Breyer and joined by Chief Justice Roberts and Justices Kennedy, Ginsburg, Alito, and Kagan,¹ the Supreme Court held that, although ERISA § 502(a)(1)(B) does not authorize reformation of an ERISA plan's terms, ERISA § 502(a)(3) may, in fact, authorize reformation, provided that the remedy is consistent with those typically available in equity.² The showing of harm required thus depends on the type of equitable remedy invoked by the court imposing the remedy.

¹ Justice Sotomayor took no part in the consideration of this case.

² A participant or beneficiary may bring a civil action to "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." ERISA § 502(a)(1)(B). A participant or beneficiary also may bring an action to "obtain other appropriate equitable relief" for violations of ERISA or the plan. ERISA § 502(a)(3). ERISA § 502(a)(1)(B) is distinguished from ERISA § 502(a)(3) by its requirement that the rights or benefits that the participant or beneficiary seeks to enforce arise from the plan itself and not merely from ERISA.

"[W]e have found nothing suggesting that [§502(a)(1)(B)] authorizes a court to alter [the plan] terms"

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"[This case] 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."

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Statutory Basis of the Remedy

Addressing a preliminary question raised by CIGNA in its briefing and discussed extensively at oral arguments, the Supreme Court concluded that the statutory provision upon which the District Court relied—ERISA § 502(a)(1)(B)—does not authorize reformation of the plan. According to the Court, although ERISA § 502(a)(1)(B) "allows a court to look outside the plan's written language in deciding what those terms are, i.e., what the language means," the provision does not "authorize[] a court to alter those terms" The Court similarly concluded that plan summary documents "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)" (emphasis in original).

Having found that the District Court's remedy was not authorized by ERISA § 502(a)(1)(B), the Court examined ERISA § 502(a)(3)—a provision the District Court expressly did not rely upon—to determine whether that provision authorized the remedy. ERISA § 502(a)(3) permits a participant, beneficiary, or fiduciary "to obtain other appropriate equitable relief" for violations of ERISA "or the terms of the plan." The Court previously in *Sereboff v. Mid Atlantic Medical Services, Inc.*, 547 U. S. 356 (2006), interpreted the term "appropriate equitable relief" in ERISA § 502(a)(3) to refer to "those categories of relief that, traditionally speaking (i.e., prior to the merger of law and equity) were typically available in equity."

The Court concluded that the type of remedy the District Court awarded fell within ERISA § 502(a)(3): "The case before us 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)" and "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." The Court listed four reasons in support of this conclusion. First, the injunctions entered by the District Court were "obviously" equitable. Second, the District Court's remedy was similar to reforming the plan terms and reforming contract terms is a traditional power of an equity court. Third, the District Court's remedy essentially held CIGNA to its promise, thus resembling estoppel, another traditional equitable remedy. Finally, the District Court's injunction requiring the plan administrator to pay retired beneficiaries money owed them under the reformed plan is consistent with an equity court's power to order monetary compensation for a loss resulting from a trustee's breach of duty or to prevent a trustee's unjust enrichment.

Standard for Recovery Based on Misleading Plan Summary Documents

Turning to the original question posed by CIGNA, the Court examined the appropriate legal standard to determine whether class members are entitled to recover benefits based on allegedly misleading explanations of benefits in plan summary documents. The Court found that "any requirement of harm must come from the law of equity" and that, "[l]ooking to the law of equity, there is no general principle that 'detrimental reliance' must be proved before a remedy is decreed." According to the Court, "[t]o the extent any [detrimental reliance] requirement arises, it is because the specific remedy being contemplated imposes such a requirement." For example, the Court noted, detrimental reliance is generally required for estoppel remedies, but is not generally required when

"Looking to the law of equity, there is no general principle that 'detrimental reliance' must be proved before a remedy is decreed."

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reforming a contract or ordering monetary compensation due to a trustee's breach of duty (a "surcharge"). Thus, the appropriate standard for relief depends on the type of equitable relief underpinning the remedy.

For example, to obtain relief by surcharge for a misleading SPD, "a plan participant or beneficiary must show that the violation injured him or her . . . [b]ut to do so, he or she need only show harm and causation." However, "actual harm may sometimes consist of detrimental reliance, but it might also come from the loss of a right protected by ERISA or its trust-law antecedents." In this case, the Court stated that it was "not difficult to imagine how the failure to provide proper summary information, in violation of the statute, injured employees even if they did not themselves act in reliance on summary documents"

In sum, the Court concluded that "the standard of prejudice must be borrowed from equitable principles," and that "[i]nformation-related circumstances, violations, and injuries are potentially too various in nature to insist that harm must always meet that more vigorous 'detrimental harm' standard when equity imposed no such strict requirement." Therefore, the Court vacated the judgment below and remanded the case for the lower courts to determine, in the first instance, if the equitable remedy imposed in this case is proper under the appropriate equitable remedies permitted by ERISA § 502(a)(3).

Scalia Concurrence

Justices Scalia, joined by Justice Thomas, concurred in judgment. Although agreeing that the Court properly found that ERISA § 502(a)(1)(B) does not authorize the requested relief, Justice Scalia maintained that the Court should have said no more because the District Court awarded relief on that provision alone and the entire discussion of the relief available under ERISA § 502(a)(3) is dicta and not binding upon any court. Therefore, Justice Scalia's concurrence does not discuss the appropriate standard for recovery based on misleading plan summary documents.

IMPLICATIONS

Plan terms generally govern the application of ERISA plans. However, for years, some of the Courts of Appeals have, in certain situations, imposed remedies reforming the plan when SPDs are inconsistent with the plan terms. The Courts of Appeals had been split on what a plaintiff must prove in this situation in order to justify reforming the plan terms. In *CIGNA*, the Court has provided guidance as to the showing of harm required to recover for false or misleading plan summary documents: the showing of harm required of plaintiffs will depend on the type of equitable remedy invoked to reform the plan terms. However, in so doing, the Court, left open the question of which equitable remedies specifically authorize the relief sought in this case and, as a result, what standard of harm a plaintiff must prove to obtain relief. This important question will need to be addressed by the lower courts in future decisions.

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