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CIGNA Corp. v. Amara: Supreme Court Expands Remedies Available for SPD Misstatements

The Supreme Court's recent opinion in *CIGNA Corp. v. Amara*, 563 U.S. ____ (May 16, 2011), is important for two reasons: first, the Supreme Court clarifies the role of SPD's and the remedies that are available for inaccurate or misleading statements within them; and second, in discussing the potential equitable remedies available under § 502(a)(3), the Court appears to significantly expand upon the remedies that had previously been understood to be available under that section. In this issue of Burning Benefits, we outline the background of *Amara* as well its two important holdings.

Background

The relevant facts in *Amara* were as follows: CIGNA had converted its traditional pension plan into a cash balance plan with a wear-away feature (note that wear-away features in qualified cash balance plan conversions were permitted at the time of this amendment but are no longer permitted). However, CIGNA distributed an SPD that made no mention of wear-away and a summary material modifi-

cation ("SMM") that implied that there would be no wear away. The District Court found that CIGNA had intentionally misrepresented the terms of the plan and violated its ERISA obligations with respect to providing accurate SPD's and SMM's. ERISA requires employee benefit plans to provide participants with an SPD and SMM that are "sufficiently accurate and comprehensive." The District Court provided relief to participants by reforming the terms of the plan to reflect no wear away and ordering benefits to be paid according to the reformed plan. The Supreme Court granted certiorari to answer the question of whether "likely harm" is the appropriate standard to apply in cases where participants claim damages based on a misrepresentation or fraud in an SPD.

Claims for Benefits Cannot be Based on the Language in an SPD

The first important holding in *Amara* is that a participant cannot sue under § 502(a)(1)(B) for benefits based on the language in an SPD. As the

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Court put it, "the 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)." Thus, the Court makes it clear that SPD and the plan document are legally distinguishable documents with legally distinguishable purposes.

As part of its reasoning, the Court considered that "[t]o 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." The message in *Amara* is clear: SPD's should provide participants with a summary of the terms of the plan, not every detail of the plan; they should be clear; and they do not control over the terms of the plan itself.

Expanded Equitable Remedies

Rather than end its analysis with the determination that § 502(a)(1)(B) claims for benefits cannot be made on the basis of language in an SPD, the Court went on to describe possible equitable remedies under § 502(a)(3) that the District Court could consider on remand. In effect, the Court replaced any claims based on misrepresentations in SPD's that may previously have been made under § 502(a)(1)(B) with equitable claims under § 502(a)(3), while at the same time expanding the universe of claims that may be brought under § 502(a)(3) generally. One effect of this change in approach will be that the elements of a claim based on misrepresentation in an SPD will vary depending on the equitable theory being invoked by the participant. Below is a description of the three equitable theories endorsed by the Court in *Amara*.

Equitable Estoppel

After *Amara* participants will no longer be able to bring § 502(a)(1)(B) claims for benefits based on SPD language, but they will still be able to bring claims based on equitable estoppel, which is capable of achieving the same result. The elements of equitable estoppel generally include: 1) a misrepresentation or material omission; 2) reliance; and 3) detriment arising out of that reliance. The second and third elements, reliance and detriment, are commonly referred to as "detrimental reliance." Thus, to the extent that a participant chooses to proceed under a theory of equitable estoppel, he or she will have to prove "detrimental reliance."

Contract Reformation

Contract reformation, unlike equitable estoppel, does not always re-

quire "detrimental reliance." In particular, where a misrepresentation rises to the level of fraud (which requires a showing of intent) or where there has been mutual mistake, courts will reform contracts without a showing of "detrimental reliance." In such cases, it is sufficient to prove that either fraud or mutual mistake has materially altered the terms of a contract.

NOTE: Although the Court discusses contract reformation in *Amara*, the facts of this case do not seem to fit this theory well. Traditionally, the fraud giving rise to contract reformation must have been perpetrated by a party to the contract. In the case of a fraudulent misrepresentation in an SPD, however, the fraud is perpetrated by a plan administrator, which entity is not necessarily the same as the plan sponsor. In other words, if Court were to apply contract reformation in this case, it would be reforming a contract based on the fraudulent misrepresentations of a third party.

Surcharge

The last, and perhaps most significant, of the equitable theories endorsed by the Court is the equitable doctrine of surcharge. Under this doctrine, courts may "charge the trustee with any loss that resulted from the breach of trust, or any profit made through the breach of trust, or with any profit that would have accrued if there had been no breach of trust." See *Restatement (Third) of Trusts* § 205, at 223-23. This type of relief is sometimes referred to as "make-whole" relief.

Surcharge requires an underlying breach of fiduciary duty and a showing of actual harm caused by the breach. While actual harm may sound like a high standard, it is actually less of a

hurdle than "detrimental reliance." Whereas "detrimental reliance" requires harm and reliance, actual harm only requires harm and causation. The required causation may be satisfied by a showing of reliance, or it may be satisfied in other ways. For example, the Court indicates that the fact that a participant's work community was misled by an inadequate SPD may be enough to satisfy actual harm where the participant claims that he or she relied on the work community for his or her information regarding the plan.

[The addition of surcharge to the remedies that are available under § 502(a)(3) is particularly noteworthy because it has the potential to greatly expand the types of harms that participants can be compensated for under ERISA. Before *Amara*, *Mertens v. Hewitt Associates*, 508 U.S. 248 (1993), was generally read to provide the rule that monetary damages were not available as a remedy for losses occurring outside of an ERISA plan because of a breach of fiduciary duty. The addition of surcharge as a theory of recovery under § 502(a)(3) appears to change that rule and potentially opens the door to previously unavailable forms of damages, such as consequential damages.]

Conclusions and Recommendations

- Because the Court has made it clear that claims for benefits under § 502(a)(1)(B) may not be brought based on SPD language, we expect that there will be an increase in requests for plan documents (both the formal plan document, as well as the SPD). Ideally, every plan should have a clear idea of what constitutes its formal plan document and SPD on any given date and should be pre-

pared to furnish such document upon the request of a plan participant.

- Many sponsors of medical plans, particularly self-insured medical plans, have maintained combined Plan/SPDs due to the complexity and massive detail of medical plan features, and out of concern for suits claiming incomplete or inaccurate information in the SPD. After *Amara*, it's at least safer than before to maintain a separate and more abbreviated SPD for a medical plan. A separate SPD is likely more accessible to participants, and if nothing else, is a shorter document to distribute. Thus, post-*Amara*, we are suggesting that those clients with combined medical Plan/SPDs now consider preparation of a shorter, separate SPD for their medical plan.
- When there is doubt whether the SPD can accurately reflect the terms of the plan in summary form, the SPD should refer participants to the plan document for details.
- SPD's remain just as important as ever because of the Court's expansion of equitable remedies.

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