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ALAN H. KANDEL

ST. LOUIS:

314.345.6463

ALAN.KANDEL@

HUSCHBLACKWELL.COM

Supreme Court Opinion Highlights Importance of Accurate Plan Communications

On May 16, 2011, the U.S. Supreme Court ruled that a summary plan description (SPD) is not the plan document it purports to summarize, and that misstated terms in an SPD may not be enforced as terms of the plan. While the holding in *CIGNA Corporation v. Amara* could be seen as pro-employer, the majority used extensive dicta that will likely encourage litigation by laying out a road map for plaintiffs to argue that they should be awarded monetary relief as if the SPD's terms were the terms of the plan.

Facts

In 1998, CIGNA changed the formula in its defined benefit plan from a traditional to a cash balance formula. The beginning credit in each participant's cash balance account was the present value of the participant's benefit accrued through January 1, 1998 under the traditional formula. As a transition formula, each participant's benefit at retirement was redefined as the greater of the benefit accrued under the traditional formula through January 1, 1998, or the cash balance amount. According to the District Court, communications to participants concerning the changes portrayed them as favorable to participants when in fact the changes reduced participant benefits. Furthermore, the communications represented that CIGNA would not realize any cost savings from the changes even though the company saved \$10 million annually.

District Court Decision

The District Court held that CIGNA's communications were incomplete, inaccurate, and intentionally misleading, and therefore did not meet two legal requirements for notifying participants about changes to their benefit plans

under ERISA. First, the District Court held that the communications did not satisfy ERISA Section 204(h), which at the time forbade a plan amendment that would provide for a significant reduction in the rate of future benefit accrual unless affected participants were provided written notice of either the text or a summary of the likely effects of the amendment. Second, the District Court held that the communications violated Sections 102(a) and 104(b) of ERISA. Those sections require a plan administrator to provide SPDs and summaries of material modification that are written in a manner calculated to be understood by the average plan participant and are sufficiently accurate and comprehensive to reasonably apprise participants and beneficiaries of their rights and obligations under the plan.

In fashioning a remedy, the District Court found that the case qualified as a class action because of a presumption that members of the relevant employee class suffered "likely harm." Referencing Section 502(a)(1)(B) of ERISA, which authorizes a plan participant or beneficiary to recover benefits due under the terms of a plan, the court reformed the terms of the transition formula to provide participants with the *sum of* (instead of the *greater of*) the benefit accrued under the old formula and the benefit under the cash balance formula (excluding the initial credit).

Supreme Court Decision

The Supreme Court unanimously disagreed with the District Court that Section 502(a)(1)(B) provides a basis for reforming the terms of a plan. Instead, the court found that the section "speaks of '*enforc[ing]* the terms of the plan,' not of *changing* them." The language of Section 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..." but does not authorize "a court to alter those terms, at least not in present circumstances, where that change, akin to the reform of a contract, seems less like the simple enforcement of a contract as written and is more like an equitable remedy." Moreover, the court disagreed that the terms of an SPD may be enforced under Section 502(a)(1)(B) as the terms of the plan and concluded that "summary documents, important as they are, provide communication with beneficiaries *about* the plan but did not themselves constitute the *terms* of the plan for purposes of" Section 502(a)(1)(B).

Rather than limiting its decision to the facts and arguments presented, the majority opinion went on to describe how other sections of ERISA might provide the basis for the relief sought by the plaintiffs. Citing several 19th century cases and treatises, the court identified three equitable remedies that could have been utilized in this case: reforming contracts, equitable estoppel, and monetary compensation for a loss resulting from a fiduciary breach or to prevent a fiduciary's unjust enrichment. To invoke those remedies, the court stated, a plan participant or beneficiary must show that he or she was actually harmed by a fiduciary breach.

Analysis

The actual holding of the case, that an SPD does not itself constitute the terms of the plan, will provide certainty to plan administrators. Several lower courts have ruled that if an SPD conflicts with the terms of the plan and is more favorable to participants than the plan terms, the terms of the SPD control. *CIGNA* negates those lower court rulings.

On the other hand, the dicta in the majority opinion describe different equitable remedies that participants and beneficiaries might pursue. The opinion is likely to encourage the ERISA plaintiff's bar to litigate alleged misstatements in SPDs and summaries of material modifications. Exactly what remedies will be allowed for what degree of alleged injury will have to be sorted out in future decisions.

What This Means to You

The *CIGNA* opinion highlights the importance of well-written, accurate and complete participant communications. Those that gloss over plan features may be negatively perceived, while those that clearly describe such features are less likely to face allegations that they were misleading. Employers and other plan administrators should carefully review SPDs and other communications to ensure consistency with the plan documents.

Contact Info

For additional information about this or other benefit issues, please contact your Husch Blackwell attorney or one of the attorneys listed below.

Alan Kandel - 314.345.6463
Shelley Runion - 816.983.8221
Mark Welker - 816.983.8148

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