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Supreme Court Determines that Although SPD Is Not Part of the Plan, Equitable Remedies May Be Appropriate for Faulty Disclosures

The U.S. Supreme Court issued its decision in Cigna Corp. v Amara. *The Court found that because the SPD is not part of the plan, statements in the SPD cannot be enforced under an ERISA claim for benefits. The Court vacated the decision and remanded the case to the District Court to determine whether there were equitable remedies available under ERISA.*

Background

Plan and SPD

Cigna Corporation (Cigna) maintained a traditional final average pay defined benefit plan for its workers until 1997. At the end of 1997, Cigna froze the plan's accruals. In November 1998, Cigna retroactively amended the plan to January 1, 1998 to provide future benefits under a cash balance formula. The retroactive amendment created an opening balance in the amended plan based on the participant's benefit at the end of 1997. In addition, it provided that the participant's benefit under the amended plan would be the greater of the individual's benefit under the old plan at the time it was frozen or the new benefit made up of the opening balance and further accruals (referred to as the "greater of A or B"). A benefit formula based on the greater of A or B results in a "wear away" so that a participant does not actually accrue additional benefits in a year as long as the old A benefit remains greater than the benefit consisting of the opening balance and the new cash balance accrual.

At the time the new cash benefit formula was adopted, Cigna provided participants with information on the new formula. In the court record, this information was described as the required summary plan description (SPD) and summary of material modification (SMM). The SPD and SMM did not describe any wear away.

Lower Courts

The District Court found that Cigna violated Section 204(h) of the Employee Retirement Income Security Act (ERISA) by not providing notice of the possible wear away under the cash balance formula. The District Court also determined that both the SPD and SMM were materially misleading because neither indicated the possibility or effect of the wear away and both led participants to believe that all of their accrued benefits under the old plan, including early retirement benefits, would be preserved in the opening account balance or as part of their protected benefits. Finally, the District Court found that the plaintiffs had raised a presumption of likely harm that had not been rebutted, and this was a sufficient showing of harm for class relief.

In a second opinion, the District Court determined the applicable remedies for the ERISA violations. The District Court found that because the ERISA Section 204(h) notice violations were with respect to the new cash balance formula and not the plan amendment that froze the old plan formula, applying the normal remedy for egregious violations of Section 204(h), which is to undo the plan amendment, would hurt participants. Thus, instead of undoing the amendment creating the cash balance plan, the District Court ordered Cigna to provide the applicable notice.

The District Court further determined that the representations in the SPD and SMM became terms of the plan. It then interpreted the reformed plan to provide an A (old plan benefit) plus B (new plan benefit), rather than the greater of benefit. In doing this, the District Court relied on ERISA Section 502(a)(1)(B), which allows a court to enforce the terms of a plan. The District Court considered, but chose not to address, whether equitable remedies were available under ERISA Section 502(a)(3) because it had just provided the necessary relief under Section 502(a)(1)(B). The Second Circuit affirmed the judgment and the substantial reasoning of the District Court in a brief summary decision.

Supreme Court

Plan and SPD

Although the issue before the Supreme Court (Court) in *Cigna Corp. v. Amara* was whether a showing of "likely harm" is sufficient to entitle plan participants to recover benefits based on faulty disclosures, the Court did not address this issue directly because it first had to determine whether the District Court had authority to change the terms of the plan and then enforce the changed terms under ERISA Section 502(a)(1)(B). The Court rejected the argument that the descriptions in plan disclosures, such as the SPD and SMM, were incorporated into the plan. The Court concluded that the District Court did not have authority under ERISA Section 502(a)(1)(B)to incorporate the SPD and SMM as terms of the plan.

Equitable Remedies

The Court then explored whether equitable remedies might be available under ERISA Section 502(a)(3), how the equitable remedy provisions could be applied, and the level of applicable harm, if any, that participants had to show.

The Court discussed three equitable remedies:

- Reformation. The Court compared the District Court's reforming the plan to reforming a contract in equity when there is a mistake or fraud;
- Estoppel. The Court described the District Court's requiring Cigna pay additional benefits as equivalent to equitable estoppel for fraudulent misrepresentation; and

- Surcharge. The Court described the District Court's requiring Cigna to pay additional benefits to retired participants as similar to the type of monetary compensation for a loss resulting from a trustee's breach of duty or to prevent the trustee's unjust enrichment available in equity as a surcharge.

BUCK COMMENT*. While the treatment of the descriptions in the SPD and SMM as not being incorporated in the plan is good news for employers, the possible expansion of equity remedies is likely to result in many more suits to defend.*

Level of Harm

In turning to the appropriate level of harm required for equitable relief, the Court stated that there is no general standard for determining harm. Instead, the required harm depends on the type of equitable relief:

- Reformation. The Court determined that to reform the contract to the parties' mutual understanding, detrimental reliance is not necessarily required to deal with fraud or omissions;,
- Estoppel. The Court determined that for estoppel, detrimental reliance is required; and
- Surcharge. The Court determined that for surcharge, there must be actual harm, which could be either detrimental reliance or the loss of protected rights.

Although the Court remanded the case to the District Court to determine whether and what type of equitable relief may be appropriate, including whether the plaintiffs were harmed, the Court insinuated that failure to provide proper disclosures in violation of ERISA may cause harm regardless of whether the participant relied upon the disclosures.

BUCK COMMENT*. While the Court remanded the case to the District Court, the Court has essentially written the District Court's new decision if the District Court wishes to come to the same result as it did in its vacated decision, but this time using equity arguments.*

Conclusion

The lower courts have taken differing positions on whether the descriptions in an SPD or SMM are to be treated as being incorporated in the plan. The Court's decision resolved the issue in the employer's favor. However, the plaintiffs' likely ability to accomplish the same result through equitable remedies does not provide an employer with much comfort. Plaintiffs may now have a whole new line of argument under which they can receive benefits described in the SPD or SMM but not included in the plan's terms. Employers must carefully prepare and scrutinize all plan communications.

Buck's consultants are available to help you understand the decision and to prepare and scrutinize participant communications.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.