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## Supreme Court Finds that Money Damages May be Available for a Misleading SPD

In a potentially far-reaching decision that contained elements of victory for both plan sponsors and plan participants, a unanimous Supreme Court has reversed and remanded a district court decision that a misleading summary plan description (“SPD”) or other communications to participants can be the basis for reforming a retirement plan to mirror the terms of the SPD. *CIGNA Corp. v. Arama*, No. 09-804, (2011). The “other shoe” for sponsors was the Court’s finding that equitable relief, including money damages, may be available under Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”) for such misleading communications.

In 1998, CIGNA converted a traditional defined benefit pension plan into a cash balance plan. In connection with the conversion, various notices, including an SPD, were sent to the plan’s participants regarding the effect of the conversion on their retirement benefits and the company’s contribution obligation. The district court found these notices to be misleading and caused the participants “likely harm,” (not requiring a showing of individual harm by the plaintiffs). Pursuant to Section 502(a)(1)(B) of ERISA (which authorizes claims for benefits under the terms of a plan), the district court reformed the plan to follow the terms of the communications. CIGNA appealed and the Second Circuit summarily affirmed.

The Supreme Court granted *certiorari* to determine whether “likely harm” was the appropriate standard to apply. It began its analysis by disagreeing with the district court’s finding that Section 502(a)(1)(B) gave it authority to reform a plan to conform to the terms of an SPD, holding that this section only allowed a court to enforce the terms of a plan. The Court also rejected the argument that an SPD is part of a plan. According to a concurring opinion by Justice Scalia (with Justice Thomas joining) the court could and should have stopped at this point. If it had, CIGNA and other sponsors undoubtedly would have been pleased.

Instead, the Court went on to state (*in dicta*) that relief could be appropriate under Section 502(a)(3) of ERISA, which provides that a participant may “obtain other appropriate equitable relief” for a violation of ERISA. The Court noted that the phrase “appropriate equitable relief” encompassed equitable relief that was “typically available” to claimants, adding that the relief sought by the plaintiffs resembled traditional claims for: (1) reformation, (2) equitable estoppel, and (3) the imposition of a surcharge (*i.e.*, money damages) on fiduciaries involved in a breach of trust. The Court added some further guidance by finding that (1) while plaintiffs did not always have to show “detrimental reliance” on the communications to prevail, they did need to make such a showing to prevail on a claim of equitable estoppel, and (2) a fiduciary could be surcharged only upon a showing of actual harm by a preponderance of the evidence.

The decision that money damages may be available in the case of a misleading SPD or other notice is almost certain to embolden participants to bring more claims under Section 502(a)(3) of ERISA. To avoid such a result, sponsors might well want to review their recent communications to participants for accuracy, and correct any that appear inaccurate or misleading. They also should be careful not to try to “sell” a benefit change too vigorously in such communications.

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