



One Minute Memo[®]

The Supreme Court Addresses ERISA Section 502(a)(3) Remedies

Today, the Supreme Court, in a unanimous 8-0 decision (with Justice Sotomayor taking no part in the consideration of the case) vacated and remanded *CIGNA Corp. v. Amara*, No. 09-804, 563 U.S. ____ (2011) to the district court for further consideration. The Supreme Court concluded that ERISA Section 502(a)(1)(B) does not provide relief to plan participants who seek to enforce the language of an intentionally misleading Summary Plan Description (SPD) that conflicts with plan terms. With Justice Breyer writing the majority opinion, the Court said that monetary relief might conceivably be obtained on remand under ERISA Section 502(a)(3) as “appropriate equitable relief.”

Background

The *Amara* decision arises from two district court opinions that were summarily affirmed by the Second Circuit. The class action was originally filed in connection with deficiencies in CIGNA’s 1998 conversion of its traditional defined benefit pension plan (“Part A”) to a cash balance plan (“Part B”). The district court determined that the conversion to the cash balance plan violated ERISA Sections 102 and 204(h) because the associated SPD and notices of the change in plan terms intentionally misrepresented plan terms — suggesting incorrectly that Part B benefits would be greater than Part A benefits (a factual finding not challenged on appeal). The district court found that because participants had shown “likely harm,” and CIGNA had failed to establish harmless error, the plaintiff class was entitled to money damages equal to additional benefits determined using a Part A plus Part B formula. See *Amara v. CIGNA Corp.*, 534 F. Supp. 2d 288 (D. Conn. 2008); *Amara v. CIGNA Corp.*, 559 F. Supp. 2d 192 (D. Conn. 2008). The Second Circuit summarily affirmed the district court’s holdings. See *Amara v. CIGNA Corp.*, Nos. 08-3388-cv (L) and 08-3460-cv (XAP), 348 Fed. Appx. 627 (2d Cir. 2009). The Supreme Court agreed to decide whether the district court correctly applied a “likely harm” standard of review.

Today’s Decision

Rather than directly deciding the question it had agreed to review, the Supreme Court held that Section 502(a)(1)(B), upon which the district court had relied in formulating its remedy, does not authorize a court to order terms of a plan reformed, and direct payment of benefits provided under the plan as reformed, because of an intentionally misleading SPD. The Court held as well that terms of an SPD may not be enforced as terms of the plan itself because representations *about* a plan are not themselves *part of* the plan.

The majority went on to suggest that Section 502(a)(3), which the Court directed the district court to consider on remand, could provide monetary relief to the plaintiff class. The Court said that at least three different forms of equitable relief exist under Section 502(a)(3) — reformation, estoppel and surcharge. Whether detrimental reliance upon the SPD's misrepresentations is a precondition to any such relief is a matter for the law of equity, and not a general proposition strictly applicable to all Section 502(a)(3) remedies. The most notable statements of the Court concerned surcharge, the contours of which in the law of equity were not briefed by the parties. The doctrine of surcharge, the Court said, would allow money damages for misrepresentations by an ERISA fiduciary. The Court stated, "Equity courts possess[] the power to provide relief in the form of monetary 'compensation' for a loss resulting from a trustee's breach of duty, or to prevent the trustee's unjust enrichment." Op. at 19.

The Court noted at the outset that its "decision rests in important part upon the circumstances present here," Op. at 3, but the decision suggests that the Court is willing to permit monetary equitable relief based upon intentional misrepresentations contained in disclosures about ERISA plans. However, the Court's statements about Section 502(a)(3) remedies are *dicta* and will need to be applied (or rejected) in particular cases with unique facts, by the district and appellate courts. In addition, the Court had no occasion to comment on the interplay between these remedies and the recent rulings (such as last year's decision in *Conkright v. Frommert*, 130 S.Ct. 1640, 1646 (2010)) on the deference owed by the courts to decisions of ERISA fiduciaries.

Justices Scalia and Thomas concurred separately in *Amara*, noting that the Section 502(a)(3) comments by the Court are *dicta* only.

Given the importance of the *Amara* decision to employers and ERISA plan fiduciaries, Seyfarth Shaw LLP will host a client webinar on Thursday, May 19, 2011 at 12:00 pm Central to discuss the decision as well as recent notable appellate court decisions affecting ERISA litigation. [Please follow this link to register.](#)



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